

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, March 16, 2022 (arguments begin at 2 p.m.)

No. 25 Cutaia v Board of Managers of 160/170 Varick Street Condominium

Michael Cutaia, a plumbing mechanic, was injured in March 2012 while working for a subcontractor on a renovation of the offices of Michilli Construction, Inc., on the 11th floor of a condominium building at 160-170 Varick Street in lower Manhattan. Cutaia had been using a 10-foot A-frame ladder to reroute copper pipes above a 12-foot high bathroom ceiling until he came to a spot where he could not reach the work with the ladder in its open position. He closed the ladder, leaned it against a wall, and climbed to an upper rung to continue cutting and rerouting the pipes. Unaware that a pipe was in contact with a 110-volt electrical cable, he grabbed it to pull it into position and received a shock, fell to the floor, and suffered injuries to his spine and shoulders. He brought this suit against Michilli, which was acting as the general contractor, and the owner of the building, Trinity Church, under Labor Law § 240(1), which imposes strict liability on owners and contractors who fail to provide adequate safety devices to protect construction workers against gravity-related risks.

Supreme Court denied his motion for summary judgment, saying, “Typically, courts grant summary judgment where plaintiffs fall from an unsecured ladder.... However, the issue is more complicated when plaintiff’s accident involves not only a fall from a ladder, but also an electrical shock which precedes the fall....” Even if the ladder “was inadequate to protect plaintiff against gravity-related dangers..., plaintiff has not shown, or even argued, that his injuries were caused by his fall, rather than the electrical shock he received,” the court said.

The Appellate Division, First Department reversed in a 3-2 decision and granted the motion for summary judgment on liability, saying, “The ‘safety device’ provided to plaintiff was an unsecured and unsupported A-frame ladder that was inadequate to perform the assigned task.... It is undisputed that the ladder was not anchored to the floor or wall. There were no other safety devices provided to plaintiff.... It is well settled that the failure to properly secure a ladder and to ensure that it remain steady and erect is precisely the foreseeable elevation-related risk against which section 240(1) was designed to protect.... The fact that the fall was precipitated by an electric shock does not change this fact.... Plaintiff suffered not only electrical burns but injuries to his spine and shoulders that necessitated multiple surgeries and are clearly attributable to the fall, and not to the shock, presenting questions of fact as to damages, but not liability.”

The dissenters said, “[I]t can be concluded from plaintiff’s own testimony that he was propelled from where he had been located on the ladder by the force of the electrical charge rather than by the force of gravity, which was not a result of any defect in the ladder.... A claim under section 240(1) still requires proof that an injurious fall from a height, even when induced by an electrical shock, was proximately caused by the inadequacy of the safety devices provided. Here, there was no credible proof that the A-frame ladder was defective or an inadequate device for the plumbing work that plaintiff was performing.... When an electrical shock causes a worker to fall from an A-frame ladder in the absence of evidence that the ladder was defective or that another safety device was required, factual issues pertaining to causation and liability are presented for trial, precluding strict liability favoring the plaintiff.”

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No. 26 Bonczar v American Multi-Cinema, Inc.

David Bonczar was injured in 2013 while working on the renovation of a movie theater owned by American Multi-Cinema, Inc. (AMC) in the Town of Webster, Monroe County. He had been standing on a six-foot, A-frame ladder to run wiring above the building's drop ceiling and as he began to descend, he later testified, the ladder "shifted and wobbled" and he fell backward to the floor. He brought this personal injury action against AMC. In a deposition, Bonczar said he did not remember whether he checked to see that the ladder was properly positioned or that its hinged spreader arms had locked into place, but he said the ladder was "fully opened" near the middle of the room.

Supreme Court granted Bonczar's motion for partial summary judgment on the issue of liability under Labor Law § 240(1), which requires building owners and contractors at construction sites to provide "ladders ... and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

The Appellate Division, Fourth Department reversed in a 3-2 decision, saying Bonczar did not show that section 240(1) was violated and the violation was the proximate cause of his injury. "Plaintiff did not know why the ladder wobbled or shifted, and he acknowledged that he might not have checked the positioning of the ladder or the locking mechanism, despite having been aware of the need to do so, the majority said. We thus conclude that plaintiff failed to meet his initial burden on the motion. '[T]here is a plausible view of the evidence – enough to raise a fact question – that there was no statutory violation and that plaintiff's own acts or omissions were the sole cause of the accident' ..."

The dissenters said Bonczar met his initial burden "by presenting evidence that the A-frame ladder from which he fell wobbled or shifted and therefore failed to provide him with proper protection," while AMC "submitted no evidence" to raise a triable issue of fact. "The fact that plaintiff could not identify why the ladder shifted does not undermine his entitlement to partial summary judgment because a plaintiff who falls from a ladder that 'malfunction[s] for no apparent reason' is entitled to 'a presumption that the ladder ... was not good enough to afford proper protection' ...". Although Bonczar did not recall checking that the spreader arms were locked, "he also testified that the ladder was upright and 'fully open' ..., and we conclude that it would be unduly speculative for a jury to infer from plaintiff's testimony that the sole proximate cause of the accident was his alleged failure to check its positioning or its locking mechanism."

After a trial, the jury found AMC had no liability for the accident. Supreme Court denied Bonczar's motions for a directed verdict and to set aside the verdict on liability, finding that "a rational jury could conclude that the Plaintiff's conduct was the sole proximate cause of the accident." The Appellate Division unanimously affirmed without explanation.

Bonczar argues he is entitled to summary judgment and a directed verdict holding AMC liable for his injuries based on his un rebutted testimony that the ladder shifted and wobbled as he climbed down, which caused him to fall, and on the presumption that ladders that "malfunction for no apparent reason" cannot provide the protection required by section 240(1).

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For respondent AMC: Josh H. Kardisch, Manhattan (212) 482-0001

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To be argued Wednesday, March 16, 2022 (arguments begin at 2 p.m.)

No. 27 Healy v EST Downtown, LLC

James Healy was working as a maintenance and repair technician for the property manager of a mixed-use building in Buffalo in 2014, when he was injured while removing a bird's nest from one of the building's rain gutters. He was responding to a "pest control" work order from a commercial tenant, who complained that birds were dropping excrement from a nest lodged in a gutter above the tenant's entryway. Healy used an eight-foot, A-frame stepladder to reach the nest and, when he reached into the gutter to remove it, he said a bird suddenly flew out and startled him, which caused the ladder to shift and him to fall to the concrete surface below. He brought this personal injury action against the building's owner, EST Downtown, LLC.

Supreme Court granted Healy's motion for partial summary judgment on the issue of liability under Labor Law § 240(1), which imposes a nondelegable duty on building owners and contractors to provide safety devices to protect workers engaged in "the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." While the statute does not apply to routine cleaning and maintenance, the court found Healy was engaged in a covered activity because he "was dispatched to address the issue of a bird burrowed in a gutter causing excrement falling in the gutter. As opposed to routine gutter cleaning or routine gutter repair occasioned by normal wear and tear, the plaintiff's task to rid the gutter of a foul fowl and to repair the hole and the improperly working gutter was akin ... to troubleshooting an uncommon malfunction."

The Appellate Division, Fourth Department affirmed on a 3-2 vote, ruling that Healy "was engaged in protected, nonroutine cleaning at the time of the accident" under Soto v J. Crew Inc. (21 NY3d 562). It said Healy's "work in removing the bird's nest from one of the building's gutters was not *routine* cleaning. Plaintiff had never before been given such a task during his time working on the premises. Indeed, the reason for removing the nest was, in part, to prevent the further accumulation of bird excrement under the nest. Plaintiff's supervisor characterized the task of removing the nest as nonroutine cleaning. In addition, removing the bird's nest from the gutter, which was located above the tenant's entry door, necessarily involved elevation-related risks that are not generally associated with typical household cleaning...."

The dissenters said Healy's "task involved standing on a stepladder approximately five feet above the ground in order to remove extraneous material in the form of a bird's nest from a gutter ... over the entrance to a first story retail storefront.... Although plaintiff himself may not have personally removed a bird's nest from a gutter before, and although the supervisor characterized 'any type of gutter cleaning' as 'non-routine' for his staff, those facts, while perhaps informative, are nevertheless not determinative.... [T]he clearing of gutters of extraneous material ... in order to keep the storefronts thereunder clean and safe 'is the *type of* job that occurs on a ... relatively frequent and recurring basis as part of the ordinary maintenance and care of commercial premises.... The activity at issue here involved an insignificant elevation risk comparable to those inherent in typical domestic or household cleaning."

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