

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D14311  
C/gts

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Argued - February 9, 2007

STEPHEN G. CRANE, J.P.  
ANITA R. FLORIO  
STEVEN W. FISHER  
THOMAS A. DICKERSON, JJ.

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2006-03272

DECISION & ORDER

Scott Bray, respondent, v  
State of New York, appellant.

(Claim No. 108605)

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Wilson Elser Moskowitz Edelman & Dicker LLP, New York, N.Y. (Richard E. Lerner and Bianca Michelis of counsel), for appellant.

Grey & Grey, LLP, Farmingdale, N.Y. (Joan S. O'Brien of counsel), for respondent.

In a claim to recover damages for personal injuries, the defendant appeals from an interlocutory judgment of the Court of Claims (Scuccimarra, J.), dated March 3, 2006, which, upon an order of the same court dated February 6, 2006, inter alia, denying that branch of its motion which was for summary judgment dismissing the claim to recover damages for violation of Labor Law § 240(1), and granting that branch of the claimant's cross motion which was for summary judgment on the issue of liability under Labor Law § 240(1), is in favor of the claimant on the issue of liability on the Labor Law § 240(1) claim.

ORDERED that the interlocutory judgment is reversed, on the law, with costs, that branch of the defendant's motion which was for summary judgment dismissing the claim to recover damages for violation of Labor Law § 240(1) is granted, that branch of the claimant's motion which was for summary judgment on the issue of liability on his claim to recover damages for violation of Labor Law § 240(1) is denied, the claim to recover damages for violation of Labor Law § 240(1) is dismissed, and the order dated February 6, 2006, is modified accordingly.

March 13, 2007

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The defendant established its prima facie entitlement to summary judgment by demonstrating that the two-foot height from which the claimant had to operate a drill rig did not pose the type of “significant risk” (see *Toefer v Long Island R.R.*, 4 NY3d 399, 408-409; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509) or “exceptionally dangerous condition” (*Misseritti v Mark IV Const. Co.*, 86 NY2d 487; *Rice v Board of Educ. of City of N.Y.*, 302 AD2d 578, 580; *Dilluvio v City of New York*, 264 AD2d 115, 118, *affd* 95 NY2d 928) contemplated by Labor Law § 240(1). In opposition, the claimant failed to raise a triable issue of fact (see generally *Alvarez v Prospect Hospital*, 68 NY2d 320, 324). Accordingly, the defendant was entitled to summary judgment dismissing the claim to recover damages for violation of Labor Law § 240(1).

CRANE, J.P., FLORIO, FISHER and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court