

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

D15012
G/cb

_____AD3d_____

Argued - March 29, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2006-06619

DECISION & ORDER

Ronald Norwood, et al., respondents, v
Whiting-Turner Contracting Company, appellant.

(Index No. 1614/04)

Herzfeld & Rubin, P.C., New York, N.Y. (David B. Hamm, Joseph E. Donat, and
Linda M. Brown of counsel), for appellant.

Law Offices of Feldman, Kleidman & Coffey, LLP, Fishkill, N.Y. (Marsha S. Weiss
of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from
an order of the Supreme Court, Dutchess County (Pagonos, J.), dated June 13, 2006, which granted
the plaintiffs' motion for summary judgment on the issue of liability pursuant to Labor Law § 240(1).

ORDERED that the order is affirmed, with costs.

The plaintiff Ronald Norwood (hereinafter Norwood) allegedly was injured when the
makeshift scaffold on which he was standing failed, causing him to fall approximately six feet to the
ground below. The scaffold consisted of unsecured planks laid on top of pipes protruding from the
building. At his deposition, Norwood testified that he could not have used a ladder to reach his work
site, and that a foreman or supervisor had told him to use "what was there" in order to reach the area.

On this record, Norwood established, prima facie, that the makeshift scaffold did not
provide him with proper protection, as required pursuant to Labor Law § 240(1), and that the
statutory violation was a proximate cause of his injury. In opposition, the defendant failed to present

May 8, 2007

Page 1.

NORWOOD v WHITING-TURNER CONTRACTING COMPANY

evidence sufficient to raise a triable issue of fact as to whether a statutory violation occurred or whether Norwood's own conduct was the sole proximate cause of the accident (*see Moniuszko v Chatham Green, Inc.*, 24 AD3d 638). Accordingly, the Supreme Court properly granted Norwood's motion for summary judgment on the issue of liability pursuant to Labor Law § 240(1) (*see Nimirovski v Vornado Realty Trust Co.*, 29 AD3d 762; *Torino v KLM Constr.*, 257 AD2d 541).

SCHMIDT, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court