

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

D16774
W/kmg

_____AD3d_____

Argued - October 15, 2007

ROBERT A. SPOLZINO, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
THOMAS A. DICKERSON, JJ.

2006-07962

DECISION & ORDER

Ecuador Intriago, appellant, v City of New York,
et al., respondents, et al., defendant.

(Index No. 46903/2000)

Taub & Marder, New York, N.Y. (Kenneth Marder and Chad P. Ayoub of counsel),
for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Ann E. Scherzer of counsel), for respondents City of New York, New York City
Department of Design and Construction, and New York City School Construction
Authority.

Cozen O'Connor, New York, N.Y. (Vincent P. Pozzuto and Lee N. Mermelstein of
counsel), for respondent WDF, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited
by his brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), entered
June 23, 2006, as denied that branch of his motion which was for summary judgment on the issue of
liability on his Labor Law § 240(1) cause of action insofar as asserted against the defendants City of
New York, New York City Department of Design and Construction, New York City School
Construction Authority, and WDF, Inc.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs
to the respondents appearing separately and filing separate briefs.

October 30, 2007

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INTRIAGO v CITY OF NEW YORK

The plaintiff was assigned to perform asbestos abatement work in a boiler room of a New York City public school. In preparing to do so, the plaintiff hung plastic sheets along the wall of the boiler room, a task which required the use of a ladder. According to the plaintiff, he was provided with several A-frame ladders of varying heights. He selected the smallest ladder and opened it only partially, leaving its hinges unlocked, because a “boiler” behind him prevented him from fully opening the ladder. While using the ladder in this manner, it closed, causing him to lose his balance and fall to the ground.

The plaintiff acknowledged that he did not properly use the A-frame ladder. Moreover, the plaintiff failed to submit evidence of the dimensions of the space in which he partially opened the ladder or the dimensions of the ladder. Thus, the plaintiff’s conclusory assertion that he was unable to fully open the ladder failed to establish, prima facie, that the ladder was insufficient to provide proper protection from an elevation-related hazard. In light of the foregoing, the plaintiff did not establish his entitlement to judgment as a matter of law on his cause of action pursuant to Labor Law § 240(1) (*see Destefano v City of New York*, 39 AD3d 581, 582; *Meade v Rock McGraw, Inc.*, 307 AD2d 156). Accordingly, without examining the sufficiency of the respondents’ opposition papers, we conclude that the branch of the plaintiff’s motion which was for summary judgment on the issue of liability on his Labor Law § 240(1) cause of action was properly denied (*see Casanova v Hamilton-Sharp Prop. LLC*, 12 AD3d 632).

SPOLZINO, J.P., KRAUSMAN, GOLDSTEIN and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court