

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

D19243  
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Submitted- March 18, 2008

STEVEN W. FISHER, J.P.  
HOWARD MILLER  
EDWARD D. CARNI  
THOMAS A. DICKERSON, JJ.

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2007-06108

DECISION & ORDER

Edward Gilhooly, respondent, v Dormitory Authority of State of New York, et al., defendants third-party plaintiffs; Beskin Corp., third-party defendant-appellant.

(Index No. 25730/02)

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Michael E. Pressman, New York, N.Y. (Robert H. Fischler of counsel), for third-party defendant-appellant.

Ferro, Kuba, Mangano, Sklyar, Gacovino & Lake, P.C. (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac], of counsel), for respondent.

Curtis Vasile, Merrick, N.Y. (Roy W. Vasile of counsel), for defendants third-party plaintiffs.

In an action to recover damages for personal injuries, the third-party defendant appeals from so much of an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated May 14, 2007, as granted the plaintiff's cross motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable by the appellant.

In July 2001 the plaintiff, a journeyman carpenter, was hanging sheetrock as part of the construction of a new dormitory building at the State University of New York at Stony Brook. According to his deposition testimony, the plaintiff was standing on a four-foot A-frame aluminum

May 13, 2008

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ladder fastening a piece of sheetrock, when the ladder inexplicably “kicked out,” causing him to fall and sustain injuries. This testimony, submitted in support of the plaintiff’s cross motion for summary judgment on the issue of liability, established his prima facie entitlement to judgment as a matter of law on the cause of action alleging a violation of Labor Law § 240(1) (*see Hanna v Gellman*, 29 AD3d 953, 953-954; *Boe v Gammarati*, 26 AD3d 351, 351-352; *Chlap v 43rd St.-Second Ave. Corp.*, 18 AD3d 598; *Peter v Nisseli Realty Co.*, 300 AD2d 289, 289-290; *Scotti v Federation Dev. Corp.*, 289 AD2d 322, 323; *Guzman v Gumley-Haft Inc.*, 274 AD2d 555, 556). In opposition, the defendants and the third-party defendant failed to raise a triable issue of fact as to whether the plaintiff’s own actions were the sole proximate cause of the accident (*see Boe v Gammarati*, 26 AD3d at 352; *Chlap v 43rd St.-Second Ave. Corp.*, 18 AD3d at 598; *Peter v Nisseli Realty Co.*, 300 AD2d at 290). Consequently, the Supreme Court properly granted the plaintiff’s cross motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

FISHER, J.P., MILLER, CARNI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court