

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

D19301  
O/kmg

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Argued - April 21, 2008

WILLIAM F. MASTRO, J.P.  
REINALDO E. RIVERA  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY, JJ.

2007-03832

DECISION & ORDER

Brenton Thompson, et al., appellants, v 1701  
Corp., respondent (and a third-party action).

(Index Nos. 11504/05, 75058/07)

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Segan, Nemerov & Singer, P.C., New York, N.Y. (Diamond & Diamond, LLC  
[Stuart Diamond], of counsel), for appellants.

Robert M. Levine, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their notice of appeal and brief, from so much of an order of the Supreme Court, Kings County (Ruchelsman, J.), dated March 27, 2007, as granted that branch of the defendant's motion which was for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff Brenton Thompson, a maintenance worker for Kentucky Fried Chicken (hereinafter KFC), allegedly was injured when he fell from a six-foot A-frame ladder which broke while he was replacing or tightening a screw or pin in the arm of a nonmotorized "door closer" at a KFC store. He and his wife, suing derivatively, subsequently commenced this action against the owner of the premises which was leased to KFC.

The Supreme Court properly granted that branch of the defendant's motion which was for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1) on

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the basis that the injured plaintiff was not engaged in an activity protected under Labor Law § 240(1), but was instead performing routine maintenance when he fell (*see Chizh v Hillside Campus Meadows Assoc., LLC*, 3 NY3d 664, 665; *Esposito v New York City Indus. Dev. Agency*, 1 NY3d 526, 528; *Azad v 270 5th Realty Corp.*, 46 AD3d 728, *lv denied* 10 NY3d 706; *Anderson v Olympia & York Tower B Co.*, 14 AD3d 520, 521). The defendant established, *prima facie*, its entitlement to judgment as a matter of law and, in opposition, the plaintiffs failed to raise a triable issue of fact.

The plaintiffs' remaining contention need not be reached in light of our determination.

MASTRO, J.P., RIVERA, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court