

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

D20271  
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Argued - June 5, 2008

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2007-06022

DECISION & ORDER

Brian Coates, appellant, v Corporation of the Presiding  
Bishop of the Church of Jesus Christ of Latter-Day  
Saints, respondent.

(Index No. 3797/05)

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Daniel P. Buttafuoco & Associates, PLLC, Woodbury, N.Y. (Ellen Buchholz of  
counsel), for appellant.

Jeffrey S. Shein, Syosset, N.Y. (Charles R. Strugatz of counsel), for respondent.

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, Suffolk County (R. Doyle, J.), dated May 31, 2007, as granted that branch of the defendant's motion which was for summary judgment dismissing the cause of action pursuant to Labor Law § 240(1) and denied, as untimely, his cross motion for summary judgment on the issue of liability on that cause of action.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the defendant's motion which was for summary judgment dismissing the cause of action pursuant to Labor Law § 240(1) and substituting therefor a provision denying that branch of the motion; as so modified the order is affirmed insofar as appealed from, with costs to the plaintiff.

Under the circumstances presented in this case, it was error for the Supreme Court to grant summary judgment to the defendant dismissing the plaintiff's cause of action pursuant to

November 18, 2008

Page 1.

COATES v CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY SAINTS

Labor Law § 240(1). Questions of fact exist as to whether the construction of the wall from which the plaintiff fell was completed at the time the plaintiff conducted his inspection (*see Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878) and, if so, whether the plaintiff performed that inspection in an unnecessarily risky manner which constituted the sole proximate cause of his accident (*see e.g. Robinson v East Med. Ctr., LP*, 6 NY3d 550). However, the denial, as untimely, of the plaintiff's cross motion for summary judgment was proper (*see CPLR 3212[a]; Brill v City of New York*, 2 NY3d 648).

MASTRO, J.P., FLORIO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court