

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

D23372
Y/prt

_____AD3d_____

Submitted - April 7, 2009

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2008-01427

DECISION & ORDER

Mukhtar H. Gillani, respondent, v 66th Street
Woodside Property, LLC, et al., defendants,
AFA Construction Corp., et al., appellants.
(and a third-party action)

(Index No. 18492/06)

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP, New York, N.Y. (Elizabeth Gelfand Kastner and Andrew J. Mihalick of counsel), for appellants.

A. Ali Yusaf, New York, N.Y. (Stephen A. Skor of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants AFA Construction Corp. and AFA Construction Co., LLC, appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Knipel, J.), dated January 3, 2008, as granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability on the cause of action pursuant to Labor Law § 240(1) insofar as asserted against them.

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

The plaintiff made a prima facie showing of entitlement to judgment as a matter of law by submitting evidence that the extension ladder on which he was working slipped out from underneath him, causing him to fall. The ladder had been placed by his supervisor on an uneven surface and lacked rubber feet (*see Klein v City of New York*, 89 NY2d 833; *Blair v Cristani*, 296 AD2d 471). In opposition, the appellants failed to raise a triable issue of fact (*see Klein v City of New York*, 89 NY2d 833; *Ruiz v WDF, Inc.*, 45 AD3d 758).

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The appellants' contention that summary judgment was premature because discovery was incomplete and only the plaintiff had been deposed is without merit (*see Rothbort v S.L.S. Mgt. Corp.*, 185 AD2d 806; *Kenworthy v Town of Oyster Bay*, 116 AD2d 628).

DILLON, J.P., ANGIOLILLO, DICKERSON and ENG, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court