

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

D25106
C/prt

_____AD3d_____

Argued - October 30, 2009

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2008-09004

DECISION & ORDER

Segundo Luis Minchala, respondent, v Port
Authority of New York and New Jersey,
et al., appellants.

(Index No. 19606/06)

Kopff, Nardelli & Dopf LLP, New York, N.Y. (Martin B. Adams of counsel), for
appellants.

Jacob Oresky & Associates, PLLC (Sacks and Sacks, LLP, New York, N.Y. [Scott
N. Singer], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Queens County (Dorsa, J.), entered August 22, 2008, which granted the
plaintiff's motion for summary judgment on the issue of liability on his cause of action alleging a
violation of Labor Law § 240(1) and denied the defendants' cross motion for summary judgment
dismissing that cause of action.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the plaintiff's motion for summary judgment on
the issue of liability on his cause of action alleging a violation of Labor Law § 240(1) and denied the
defendants' cross motion for summary judgment dismissing that cause of action. Contrary to the
defendants' contention, the plaintiff established, prima facie, that the type of work he performed was
covered by Labor Law § 240(1) in that he was performing acts ancillary to ongoing construction at
the time of his accident (*see Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878). Moreover, the

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plaintiff established, prima facie, that the accident stemmed from an elevation-related risk covered by Labor Law § 240(1) when the cement barrier that injured him fell approximately seven feet from its unsecured position on a forklift (*see Outar v City of New York*, 5 NY3d 731; *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259). In opposition to the plaintiff's prima facie showing, the defendants failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).

SKELOS, J.P., ENG, AUSTIN and ROMAN, 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