

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

D28166  
H/ct

\_\_\_\_\_AD2d\_\_\_\_\_

Argued - November 16, 2009

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2009-01088

DECISION & ORDER

Luis F. Ortiz, appellant, v Varsity Holdings, LLC,  
et al., respondents.

(Index No. 31847/06)

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Albert Zafonte, Jr. (Richard Paul Stone, New York, N.Y., of counsel), for appellant.

Rebore, Thorpe & Pisarello, P.C., Farmingdale, N.Y. (Timothy J. Dunn III and  
Michelle S. Russo of counsel), for respondents.

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, Kings County (Schmidt, J.), dated December 12, 2008, as granted that branch of the defendants' motion which was for summary judgment dismissing the third cause of action to recover damages for a violation of Labor Law § 240(1), and denied his cross motion, in effect, for summary judgment on the issue of liability on that cause of action.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The plaintiff, a laborer, alleges that while he stood on or near the ledge of a six-foot high dumpster, rearranging debris from an apartment renovation project that had been placed therein, he slipped and fell backwards onto the sidewalk below, resulting in injuries. It is undisputed that the plaintiff was provided with no safety devices enumerated in Labor Law § 240(1) during the performance of this work.

July 13, 2010

ORTIZ v VARSITY HOLDINGS, LLC

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We are constrained to affirm the Supreme Court's grant of that branch of the defendants' motion which was for summary judgment dismissing the Labor Law § 240(1) cause of action and the denial of the plaintiff's cross motion, in effect, for summary judgment on the issue of liability on that cause of action (*see Monterroza v State Univ. Constr. Fund*, 56 AD3d 629; *Georgopulos v Gertz Plaza, Inc.*, 13 AD3d 478).

SKELOS, J.P., ENG, BELEN and AUSTIN, JJ., concur.

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2009-01088

DECISION & ORDER ON MOTION

Luis F. Ortiz, appellant, v Varsity Holdings, LLC,  
et al., respondents.

(Index No. 31847/06)

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On the Court's own motion, it is

ORDERED that the aggrieved party is granted leave to appeal to the Court of Appeals, if he be so advised, pursuant to CPLR 5602(a)(1)(i) from the decision and order of this Court affirming, insofar as appealed from, the order of the Supreme Court, Kings County (Schmidt, J.), dated December 12, 2008, and the following question is certified to the Court of Appeals: Was the decision and order of this Court properly made? Questions of law have arisen which, in our opinion, ought to be reviewed by the Court of Appeals (*see* CPLR 5713).

SKELOS, J.P., ENG, BELEN and AUSTIN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court