

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

D30432
Y/prt

_____AD3d_____

Submitted - February 3, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-11072

DECISION & ORDER

Symeon Monioudis, respondent, v City of New York,
appellant (and a third-party action).

(Index No. 37192/03)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow and John Hogrogian of counsel), for appellant.

Argyropoulos & Bender, Astoria, N.Y. (Susan E. Paulovich of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (R. Miller, J.), dated September 10, 2009, which granted the plaintiff's motion for summary judgment on the issue of liability on the cause of action pursuant to Labor Law § 240(1).

ORDERED that the order is affirmed, with costs.

The plaintiff was working in a courthouse owned by the defendant and using a ladder to prepare the walls and ceiling for painting when the ladder collapsed, causing him to fall and sustain injuries.

The plaintiff established, prima facie, his entitlement to judgment as a matter of law on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) by submitting his deposition testimony, which demonstrated that he fell when the ladder he was using collapsed, and that the failure to provide a secure ladder proximately caused his injuries (*see Gordon*

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v Eastern Ry. Supply, 82 NY2d 555, 561-562; *McCaffery v Wright & Co. Constr., Inc.*, 71 AD3d 842, 843; *Yin Min Zhu v Triple L. Group, LLC*, 64 AD3d 590; *Gilhooly v Dormitory Auth. of State of New York*, 51 AD3d 719, 720; *Rivera v Dafna Constr. Co., Ltd.*, 27 AD3d 545).

In opposition, the defendant failed to raise a triable issue of fact. The defendant did not offer any evidence, only mere speculation, to oppose the prima facie case or create a bona fide issue regarding the plaintiff's credibility as to a material fact (see *Klein v City of New York*, 89 NY2d 833, 835; *McCaffery v Wright & Co. Constr., Inc.*, 71 AD3d at 843; *Barr v 157 5 Ave., LLC*, 60 AD3d 796, 797-798; *Rivera v Dafna Constr. Co., Ltd.*, 27 AD3d at 545-546; cf. *Duran v Kijak Family Partners, L.P.*, 63 AD3d 992, 994). Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment on the issue of liability on the cause of action pursuant to Labor Law § 240(1).

ANGIOLILLO, J.P., FLORIO, BELEN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court