

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

D31875
W/prt

_____AD3d_____

Argued - June 2, 2011

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2009-02049

DECISION & ORDER

Roy Losito, appellant, v Manlyn Development
Group, Inc., et al., respondents, et al., defendant.

(Index No. 5274/07)

Hach & Rose, LLP, New York, N.Y. (Philip S. Abate of counsel), for appellant.

Baxter Smith & Shapiro, P.C., Hicksville, N.Y. (Sim R. Shapiro 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, Nassau County (Mahon, J.), entered January 16, 2009, as denied that branch of his motion which was for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) insofar as asserted against the defendants Manlyn Development Group, Inc., and FB of Long Island, LLC.

ORDERED that the appeal is dismissed, without costs or disbursements.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action on April 19, 2010 (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the companion appeal from the judgment (*see Losito v Manlyn Devel.*

June 21, 2011

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LOSITO v MANLYN DEVELOPMENT GROUP, INC.

Group, Inc., _____AD3d_____ [Appellate Division Docket No. 2010-05303; decided herewith]).

RIVERA, J.P., ENG, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court