

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

D32902
N/kmb

_____AD3d_____

Argued - October 6, 2011

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-08359

DECISION & ORDER

Joseph Felix, appellant, v Independence Savings Bank, et al., defendants, 20 Bayard Views, LLC, et al., respondents (and a third-party action).

(Index No. 11876/06)

The Perecman Firm, PLLC, New York, N.Y. (David H. Perecman and Peter D. Rigelhaupt of counsel), for appellant.

Marks, O'Neill, O'Brien & Courtney, P.C., Elmsford, N.Y. (James M. Skelly, Brian D. Meisner, and Joel Maxwell of counsel), for respondents.

In a consolidated action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Knipel, J.), dated June 28, 2010, which denied his motion for summary judgment on the issue of liability on the cause of action alleging violations of Labor Law § 240(1).

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion for summary judgment on the issue of liability on the cause of action alleging violations of Labor Law § 240(1) is granted.

The plaintiff allegedly was injured when he fell from a scaffold, which was on wheels, while performing pipefitting work. He established, prima facie, that the defendants were subject to liability under Labor Law § 240(1) based on his deposition testimony that a wheel of the scaffold on which he was working slipped into a hole, causing him to fall (*see Caballero v Benjamin Beechwood, LLC*, 67 AD3d 849, 852).

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In opposition, the defendants failed to raise a triable issue of fact (*cf. Wiener v Rosmarin*, 282 AD2d 449, 450).

Accordingly, the Supreme Court should have granted the plaintiff's motion for summary judgment on the issue of liability on the cause of action alleging violations of Labor Law § 240(1).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court