

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

D33210
O/kmb

_____AD3d_____

Argued - November 10, 2011

WILLIAM F. MASTRO, A.P.J.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-02041

DECISION & ORDER

Jose Reyes, appellant-respondent, v Camille Khan,
respondent-appellant.

(Index No. 32438/07)

Peña & Kahn, PLLC, Bronx, N.Y. (Diane Welch Bando of counsel), for appellant-respondent.

Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y. (Gregory A. Cascino of counsel), for respondent-appellant.

In an action to recover damages for personal injuries, the plaintiff appeals from so much of an order of the Supreme Court, Kings County (Bunyan, J.), entered January 18, 2011, as denied his motion for summary judgment on the issue of liability on his cause of action alleging a violation of Labor Law § 240(1), and the defendant cross-appeals, as limited by her brief, from so much of the same order as denied that branch of her cross motion which was for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1).

ORDERED that the order is affirmed, without costs or disbursements.

In support of his motion for summary judgment on the issue of liability on his cause of action alleging a violation of Labor Law § 240(1), the plaintiff submitted evidence suggesting that a proximate cause of his accident may have been the placement of the subject ladder on a loose soil surface and/or the failure to adequately secure the ladder in view of the rigorous nature of the work he was performing. Conversely, the defendant produced evidence indicating that the ladder was not defective and afforded proper protection for the task assigned to the plaintiff, and that the plaintiff's own performance of the work in an unnecessarily dangerous and improper manner may have been

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the sole proximate cause of the accident. Given the triable issues of fact raised by these competing submissions, the Supreme Court properly denied the plaintiff's motion for summary judgment on his cause of action alleging a violation of Labor Law § 240(1), and properly denied that branch of the defendant's cross motion which was for summary judgment dismissing that cause of action (*see Canosa v Holy Name of Mary R.C. Church*, 83 AD3d 635, 637; *Bin Gu v Palm Beach Tan, Inc.*, 81 AD3d 867; *Santiago v Fred-Doug 117, L.L.C.*, 68 AD3d 555, 556; *Canino v Electronic Tech. Co.*, 28 AD3d 932, 933-934; *Boguszewski v Solo Salon & Spa*, 309 AD2d 777).

MASTRO, A.P.J., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court