

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

D33530
H/kmb

_____AD3d_____

Argued - December 15, 2011

WILLIAM F. MASTRO, A.P.J.
RUTH C. BALKIN
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2011-05384

DECISION & ORDER

Jozef Kaminski, respondent, v 22-61 42nd Street,
LLC, appellant.

(Index No. 3073/10)

Burns, Russo, Tamigi & Reardon, LLP, Garden City, N.Y. (John T. Pieret of counsel), for appellant.

Block O'Toole & Murphy, New York, N.Y. (Frederick C. Aranki of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Queens County (Weiss, J.), dated May 6, 2011, 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 allegedly was injured while repairing stucco on a building in Queens. He commenced this action against the owner of the building, asserting, among other things, a cause of action pursuant to Labor Law § 240(1). After discovery was completed, the plaintiff moved for summary judgment on the issue of liability on that cause of action. The plaintiff made a prima facie showing of his entitlement to judgment as a matter of law by submitting evidence that the defendant hired Denton Stoneworks (hereinafter Denton) to repair stucco, that Denton, in turn, engaged the plaintiff to perform the work at an hourly rate, and that during the course of the work, he allegedly was injured when an inadequately secured ladder that he was descending slipped or moved, causing

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him to fall (*see Raynor v Quality Plaza Realty, LLC*, 84 AD3d 774, 774-775; *Herrera v Union Mech. of NY Corp.*, 80 AD3d 564, 565). Contrary to the defendant's contention, in opposing the motion, the defendant failed to raise a triable issue of fact as to whether the plaintiff was an employee within the meaning of Labor Law § 240(1) (*see Singh v City of New York*, 68 AD3d 1095, 1096).

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).

MASTRO, A.P.J., BALKIN, DICKERSON and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court