

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

D34083
W/kmb

_____AD3d_____

Argued - January 24, 2012

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2010-10308

DECISION & ORDER

Edwin Mayorquin, appellant, v AP Development,
LLC, respondent (and a third-party action).

(Index No. 2474/05)

Gorayeb & Associates, P.C., New York, N.Y. (John M. Shaw of counsel), for
appellant.

Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains, N.Y. (Joseph A.H.
McGovern and John D. Morio of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Queens County (Weiss, J.), entered August 11, 2010, as denied his motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff was employed by a subcontractor engaged in the renovation of a residence owned by the defendant, AP Development, LLC, when he allegedly fell from the roof and sustained injuries. The plaintiff commenced this action against the defendant alleging violations of, inter alia, Labor Law § 240(1). The plaintiff filed a note of issue on August 31, 2006. In an order dated April 23, 2007, the Supreme Court, Queens County, struck the case from the trial scheduling calendar, directed the parties to complete depositions and motion practice in an expeditious manner, and granted the plaintiff's motion to extend his time to move for summary judgment on the issue of liability until 60 days after the completion of all discovery. The last deposition was held on August 13, 2009. The plaintiff moved for summary judgment on January 10, 2010, some five months later,

February 21, 2012

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without offering any reason for the delay in filing his motion.

The Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability as untimely (*see Miceli v State Farm Mut. Auto Ins. Co.*, 3 NY3d 725, 727; *Brill v City of New York*, 2 NY3d 648,652; *Deberry-Hall v County of Nassau*, 88 AD3d 634; *Castillo v Valente*, 85 AD3d 1080; *Castro v New York City Health & Hosps. Corp.*, 74 AD3d 1005, 1006; *Joson v G & S Realty I, LLC*, 68 AD3d 1061; *Thompson v New York City Bd. of Educ.*, 10 AD3d 650). The plaintiff offered no reason for failing to file his motion within the time directed by the Supreme Court in the order dated April 23, 2007. Contrary to the plaintiff's contention, the Supreme Court's direction that motions be made "expeditiously" after the completion of discovery was not ambiguous as, in the same order, it granted the plaintiff the relief he requested, namely, a 60-day extension of the time to move for summary judgment on the issue of liability. Since the plaintiff failed to move within those 60 days, the Supreme Court was without discretion to reach the merits of the motion for summary judgment (*see Brill v City of New York*, 2 NY3d at 650; *Deberry-Hall v County of Nassau*, 88 AD3d 634; *Castillo v Valente*, 85 AD3d 1080; *Castro v New York City Health & Hosps. Corp.*, 74 AD3d at 1006; *Thompson v New York City Bd. of Educ.*, 10 AD3d 650).

In light of the foregoing, we need not reach the parties' remaining contentions.

DILLON, J.P., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court