

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

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_____AD3d_____

Argued - November 26, 2012

PETER B. SKELOS, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2011-07625

DECISION & ORDER

Manuel Chabla, respondent, v 72 Greenpoint, LLC,
et al., appellants (and a third-party action).

(Index No. 24898/08)

Milber, Makris Plousadis & Seiden, LLP, Woodbury, N.Y. (Lorin A. Donnelly of counsel), for appellants.

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

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated April 27, 2011, which granted the plaintiff's 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, with costs.

The plaintiff allegedly was injured when he fell approximately 15 feet from a scaffold to the ground. The plaintiff testified at his deposition that he was descending a two-story high scaffold using the metal cross-pieces of the scaffolding's frame. After reaching the scaffolding's first level, the plaintiff rested his foot on a piece of platform planking that extended approximately eight inches beyond the scaffolding's frame when the planking broke, causing him to fall to the ground.

To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must establish that the statute was violated, and that the violation was a proximate cause of his or her injuries (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287). Here, the

plaintiff made a prima facie showing establishing his entitlement to judgment as a matter of law by demonstrating that when he stepped on the edge of one of the planks of the scaffolding, it failed to support his weight and broke, causing him to fall.

In opposition to this prima facie showing, the defendants failed to raise a triable issue of fact as to whether the plaintiff's actions were the sole proximate cause of his injuries (*see Gallagher v New York Post*, 14 NY3d 83, 88; *Dwyer v Central Park Studios, Inc.*, 98 AD3d 882, 884; *Durmiaki v International Bus. Machs. Corp.*, 85 AD3d 960, 961; *Alvarez v 1407 Broadway Real Estate LLC*, 80 AD3d 524, 524-525). Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

SKELOS, J.P., BALKIN, CHAMBERS and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court