

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

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_____AD3d_____

Submitted - November 9, 2012

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-08921

DECISION & ORDER

Michael Gambale, et al., respondents, v 400 Fifth
Realty, LLC, et al., appellants.

(Index No. 18694/09)

Malapero & Prisco LLP, New York, N.Y. (Frank J. Lombardo of counsel), for
appellants.

Sacks and Sacks, LLP, New York, N.Y. (Scott N. Singer of counsel), for
respondents.

In a consolidated action to recover damages for personal injuries, the defendants
appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County
(Rothenberg, J.), dated August 4, 2011, as granted that branch of the plaintiffs' motion which was
for summary judgment on the issue of liability on the cause of action alleging a violation of Labor
Law § 240(1), and denied that branch of their cross motion which was for summary judgment
dismissing that cause of action.

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

The plaintiffs are ironworkers who allegedly were injured while working on the 42nd
floor during the construction of a building located on Fifth Avenue in Manhattan. The accident
occurred when the floor, which then consisted of plywood decking, collapsed underneath them as
they were standing on it. The plaintiffs moved, inter alia, for summary judgment on the issue of
liability on the cause of action alleging a violation of Labor Law § 240(1), and the defendants cross-
moved, inter alia, for summary judgment dismissing that cause of action. The Supreme Court
granted that branch of the plaintiffs' motion and denied that branch of the defendants' cross motion.

December 19, 2012

Page 1.

GAMBALE v 400 FIFTH REALTY, LLC

The defendants appeal, and we affirm.

The plaintiffs met their prima prima facie burden of establishing that the defendants' violation of Labor Law § 240(1) was a proximate cause of their accident (*see Silvia v Bow Tie Partners, LLC*, 77 AD3d 1143; *Zong Mou Zou v Hai Ming Constr. Corp.*, 74 AD3d 800; *Robertti v Powers Chang*, 227 AD2d 542). In opposition, the defendants failed to raise a triable issue of fact as to whether the plaintiffs' actions were the sole proximate cause of their accident (*see Zong Mou Zou v Hai Ming Constr. Corp.*, 74 AD3d at 800; *Beamon v Agar Truck Sales, Inc.*, 24 AD3d 481; *Birbilis v Rapp*, 205 AD2d 569).

Accordingly, the Supreme Court properly granted that branch of the plaintiffs' motion which was for summary judgment on the issue of liability on their cause of action alleging a violation of Labor Law § 240(1), and denied that branch of the defendants' cross motion which was for summary judgment dismissing that cause of action.

MASTRO, J.P., ANGIOLILLO, SGROI and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court