

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-02442

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND GORSKI, JJ.

DAVID SIEDLECKI AND BARBARA SIEDLECKI,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO, DEFENDANT-RESPONDENT.

CANTOR, LUKASIK, DOLCE & PANEPINTO, P.C., BUFFALO (SEAN COONEY OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

ALISA A. LUKASIEWICZ, CORPORATION COUNSEL, BUFFALO (BRENDAN R. MEHAFFY
OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered September 29, 2008 in a personal injury action. The order denied the motion of plaintiffs for partial summary judgment on liability on the Labor Law § 240 (1) cause of action.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the motion is granted.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by David Siedlecki (plaintiff) when he fell while descending a scaffold. Plaintiff's work entailed moving the scaffold while a plasterer and painter worked on the ceiling of an auditorium. Plaster dust had accumulated on the frame of the scaffold and, during his descent from the scaffold, plaintiff's foot slipped on a rung and plaintiff fell to the ground. Supreme Court erred in denying plaintiffs' motion for partial summary judgment on liability on the Labor Law § 240 (1) cause of action. Plaintiffs established that defendant "breach[ed] the statutory duty under section 240 (1) to provide [him] with adequate safety devices, and [that] this breach . . . proximately cause[d plaintiff's] injuries" (*Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554). In support of the motion, plaintiffs submitted an affidavit in which plaintiff stated that the absence of a ladder placed alongside the scaffold forced him to descend the scaffold using the frame, which had become slippery from the plaster dust. Although the scaffold did not collapse, slip, or otherwise malfunction, it "did not provide proper protection to plaintiff by itself, without the use of additional precautionary devices or measures" (*Smith v Fayetteville-Manlius Cent. School Dist.*, 32 AD3d 1253, 1254). Defendant submitted no evidence in opposition to the motion and therefore failed to raise a triable issue of fact to defeat

the motion (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court