

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

781

CA 08-02132

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND GREEN, JJ.

TONY ARNOLD, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

BALDWIN REAL ESTATE CORPORATION AND
GENESEE WEST ASSOCIATES, LP,
DEFENDANTS-APPELLANTS.

GOLDBERG SEGALLA LLP, ROCHESTER (RICHARD C. BRISTER OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

CELLINO & BARNES, P.C., ROCHESTER (SAREER A. FAZILI OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Thomas A. Stander, J.), entered April 15, 2008 in a personal injury action. The order denied defendants' motion for summary judgment and granted plaintiff's cross motion for partial summary judgment on liability.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this Labor Law action seeking damages for injuries he sustained when he fell approximately 11 feet from a ladder to the ground while painting a commercial building. Supreme Court properly granted plaintiff's cross motion for partial summary judgment on liability with respect to the Labor Law § 240 (1) claim. "Plaintiff met his initial burden by submitting his uncontroverted deposition testimony in which he testified that [the] ladder shifted, thus establishing as a matter of law that it was not so placed . . . as to give proper protection to plaintiff" (*Evans v Syracuse Model Neighborhood Corp.*, 53 AD3d 1135, 1136 [internal quotation marks omitted]; see *Whalen v ExxonMobil Oil Corp.*, 50 AD3d 1553), and he further established that defendants' violation of Labor Law § 240 (1) was a proximate cause of his injuries (see *Rudnik v Brogor Realty Corp.*, 45 AD3d 828, 829). Thus, it cannot be said that plaintiff was "solely to blame for [them]" (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 290; see *Woods v Design Ctr., LLC*, 42 AD3d 876, 877). Defendants failed to raise a triable issue of fact in opposition to the cross motion (see generally *Zuckerman v City of New York*, 49 NY2d 557, 562). The evidence submitted by defendants establishing "that the ladder was structurally sound and not defective is not relevant on the issue of whether it was properly placed"

(*Whalen*, 50 AD3d at 1554 [internal quotation marks omitted]).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court