

State of New York Court of Appeals

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To be argued Wednesday, March 24, 2021 (arguments begin at 2 p.m.)

No. 24 Cutaia v Board of Managers of 160/170 Varick Street Condominium

Michael Cutaia, a plumbing mechanic, was injured in March 2012 while working for a subcontractor on a renovation of the offices of Michilli Construction, Inc., on the 11th floor of a condominium building at 160-170 Varick Street in lower Manhattan. Cutaia had been using a 10-foot A-frame ladder to reroute copper pipes above a 12-foot high bathroom ceiling until he came to a spot where he could not reach the work with the ladder in its open position. He closed the ladder, leaned it against a wall, and climbed to an upper rung to continue cutting and rerouting the pipes. Unaware that a pipe was in contact with a 110-volt electrical cable, he grabbed it to pull it into position and received a shock, fell to the floor, and suffered injuries to his spine and shoulders. He brought this suit against Michilli, which was acting as the general contractor, and the owner of the building, Trinity Church, under Labor Law § 240(1), which imposes strict liability on owners and contractors who fail to provide adequate safety devices to protect construction workers against gravity-related risks.

Supreme Court denied his motion for summary judgment, saying, “Typically, courts grant summary judgment where plaintiffs fall from an unsecured ladder.... However, the issue is more complicated when plaintiff’s accident involves not only a fall from a ladder, but also an electrical shock which precedes the fall....” Even if the ladder “was inadequate to protect plaintiff against gravity-related dangers..., plaintiff has not shown, or even argued, that his injuries were caused by his fall, rather than the electrical shock he received,” the court said.

The Appellate Division, First Department reversed in a 3-2 decision and granted the motion for summary judgment on liability, saying, “The ‘safety device’ provided to plaintiff was an unsecured and unsupported A-frame ladder that was inadequate to perform the assigned task.... It is undisputed that the ladder was not anchored to the floor or wall. There were no other safety devices provided to plaintiff.... It is well settled that the failure to properly secure a ladder and to ensure that it remain steady and erect is precisely the foreseeable elevation-related risk against which section 240(1) was designed to protect..... The fact that the fall was precipitated by an electric shock does not change this fact.... Plaintiff suffered not only electrical burns but injuries to his spine and shoulders that necessitated multiple surgeries and are clearly attributable to the fall, and not to the shock, presenting questions of fact as to damages, but not liability.”

The dissenters said, “[I]t can be concluded from plaintiff’s own testimony that he was propelled from where he had been located on the ladder by the force of the electrical charge rather than by the force of gravity, which was not a result of any defect in the ladder.... A claim under section 240(1) still requires proof that an injurious fall from a height, even when induced by an electrical shock, was proximately caused by the inadequacy of the safety devices provided. Here, there was no credible proof that the A-frame ladder was defective or an inadequate device for the plumbing work that plaintiff was performing.... When an electrical shock causes a worker to fall from an A-frame ladder in the absence of evidence that the ladder was defective or that another safety device was required, factual issues pertaining to causation and liability are presented for trial, precluding strict liability favoring the plaintiff.”

For appellant Trinity Church & Michilli Constr.: Michael J. Kozoriz, Manhattan (917) 778-6600
For respondent Cutaia: Louis Grandelli, Manhattan (212) 668-8400