

**Morrison v Christa Construction, Inc.**

2001 NY Slip Op 30050(U)

December 5, 2001

Supreme Court, Erie County

Docket Number: 0009513/1997

Judge: Eugene M. Fahey

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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**JOHN P. MORRISON**

Plaintiff

v.

Index No. 1997/9513

**CHRISTA CONSTRUCTION, INC.  
CIMINELLI - COWPER CO., INC.  
THORNWOOD ENTERPRISES  
CANNON - ARCHITECTS & ENGINEERS**

Defendants

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EDWARD J. SCHWENDLER, III, ESQ.  
LAW OFFICES OF EUGENE C. TENNEY  
Attorneys for Plaintiff

JOHN J. QUACKENBUSH, ESQ.  
Attorney for Defendants

**MEMORANDUM DECISION**

FAHEY, J.

Plaintiff, John P. Morrison, brings this action for personal injuries suffered on November 7, 1994, when he slipped away from a dry wall bucket mounted atop a six foot high, movable scaffold, and was left dangling during construction of a veterans' home in Batavia, New York.

Now, Defendants Christa Construction, Inc., the prime contractor, and Cannon Architects' Engineers, the construction manager, move for summary judgment in their favor.

Plaintiff Morrison likewise moves for summary judgment on liability under Section 240(1) of the Labor Law.

Defendants Christa and Cannon's motion is denied.

Plaintiff Morrison's motion is granted.

TESTIMONY

The Court has obtained the transcript of the entire Examination Before Trial of Plaintiff Morrison on February 18, 2000.

At that time, Plaintiff Morrison testified in pertinent part that he was working atop a Webtex Baker extendable scaffold (p. 11), fire taping the drywall above the ceiling line (p. 17), kicking the scaffold along while standing on it, that he was between the water intake and the wall and that he had to get on the bucket to touch the wall (p. 18).

Plaintiff Morrison further testified

"Q. (from Mr. Quackenbush) Why were you doing that?

A. There was no way I could reach the wall, never mind the height. There was no way I could just reach the wall.

Q. What was stopping you from reaching the wall?

A. There was a heating duct and conduit pipe and different things of construction coming into the building - - into the room rather, that I had to reach over to get to this wall. I probably could get this high and there's no way I could reach the rest unless I was on the bucket. You know, I could reach - - I don't even think I could reach the wall, if I remember correctly. It had to be on the bucket because I was so far from the wall (p. 20)"

Plaintiff Morrison further testified that he tried to go back when he completed the wall, by pushing the scaffold (p. 25), by moving his hips, and that he couldn't get out from where he was to get down off the bucket because it had gotten too narrow (p. 27), that the scaffold had a wheel locked up and would not move and that it started going over, and that he started to call for help because he couldn't get out (p.

30), because he was stuck between the heating duct and the pipe, one in front and one behind, above his waist (p. 31), that he stopped the scaffold from tipping over by stopping moving and that it started to tip over again, that he was not yet in pain (p. 54), that he hadn't fallen off the bucket yet, that he was calling for help and nobody heard him (p. 55), that he kicked the wall to get their attention and the bucket fell over on him, that he was struggling to get it back up (p. 59), that it slipped out from under again, that he was thrashing around in there trying to get out when he fell trying to get the bucket up, trying to save (p. 60) himself (p. 61).

#### CONCLUSIONS OF LAW

The Court begins by concluding it rejects the assertion of Defendants Christa and Cannon, contained in paragraph 22 of its Attorney's Affidavit, that Plaintiff Morrison's inability to extricate himself could have happened at any level, even at ground level. The accident could not have occurred had he not been atop a scaffold atop a bucket, some eight feet off the ground. Plaintiff Morrison was injured as his feet were left dangling after the bucket which supported him slipped away, during his efforts to extricate himself from the awkward position he had assumed between the two obstructions and his work, after the movable scaffold became stuck and nearly tipped over.

"Labor Law Section 240(1) was designed to prevent these types of accidents in which the scaffold...ladder, or other protection device proved inadequate to shield the worker from harm directly flowing from the application of the force of gravity to an object or person (*Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, at 501 [1993])."

The work site here, being elevated, required safety devices to provide

exceptional protection against the special hazards arising from that elevation to comport with Labor Law §240(1). The devices, first the scaffold and then the bucket, failed, exposing the worker to being pinned, a harm directly flowing from the application of the effects of gravity, the harm contemplated by the statute, just as the more ordinary failure of a scaffold leads to a worker's fall (see *Ross supra*, see also *Striegel v. Hillcrest Heights Development Corporation*, 266 A.D.2d 809, 698 N.Y.S.2d 379 [4<sup>th</sup> Dept. 1999]).

There likewise can be no effective argument that the protective devices fulfilled their function and that the accident was caused by an unrelated condition like the "trip from a ladder" case in *Nieves v. Five Boro Air Conditioning and Refrigeration Corp.*, 93 N.Y.2d 914 (1999). The injury here did not result from a "separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance (*Nieves supra* at 916)," like the hidden object on the floor there. See also the separate hazard of the hot oil in the trough in *Rocovich v. Consol. Edison Corp.*, 78 N.Y.2d 509 (1991).

Thus, the Court notes the stricture of the Court of Appeals in *Nieves supra* at 916 that "(t)he extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity (quoting *Ross supra* at 501)."

The Court also notes the earlier doctrine of the Court of Appeals in *Bohnhoff v. Fischer*, 210 N.Y.2d 172, 174 (1914) that "said statute is to be liberally construed to accomplish its beneficial purpose; that is, the better protection of workmen engaged in certain dangerous employments..."

The Court finds no contradiction here. The contemplated risks are those flowing directly from gravity, not those simply related tangentially to gravity. The pinning

here is a direct effect of gravity.

There is a nexus between the failure of the scaffold and bucket, which exposed Plaintiff Morrison to the effects of gravity.

The Court can only conclude that partial summary judgment on liability, under Section 240(1) properly lies.

Submit order upon notice to opposing counsel.

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EUGENE M. FAHEY, J.S.C.

Dated: December 5, 2001