

**Principe v Presta**

2008 NY Slip Op 30077(U)

January 10, 2008

Supreme Court, New York County

Docket Number: 0100276/2005

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
PRESENT: Hon. LOUIS B. YORK Justice PART 2

RALPH A. PRINCIPE, JR.,  
Plaintiff,  
-against-

Index No. 100276/05  
Motion Date \_\_\_\_\_  
Motion Seq. No. 002  
Motion Cal. No. \_\_\_\_\_

CONSTANTINO PRESTA, C.N.G. REALTY MGMT.  
CORP., and RUTH TRAMPLER,  
Defendants.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to Summary Jgmt.

NUMBERED  
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

PAPERS  
\_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B)

Motion Sequences Nos. 002 and 003 are consolidated for disposition.

This is an action for personal injuries pursuant to Labor Law §§240(1), 241(6), and 200 and common law negligence.

Defendant Ruth Trampler, the lessee of an apartment in a building owned by co-defendant Constantino Presta, and managed by co-defendant C.N.G. Realty, hired plaintiff, a licensed electrician, the sole proprietor and owner of Stanco Electric to install an air conditioner in her living room.

After the plaintiff had a meeting with all of the parties to explain what his plan was and to check his credentials, he went to work.

He brought all of his tools and equipment, including a ladder, with him and worked completely without supervision or control. He used a ladder to drill a hole for the wires that were to be connected to the air conditioner. At first, he used one hand, but on encountering resistance from the beam he was drilling through, he used both hands and pushed harder. Somehow, the ladder moved from under him, although positioned on a drop cloth, and he fell.

To do the drilling, the defendant had to look up to the spot he was drilling through while standing on a six-foot ladder. He also had an eight-foot ladder, but it was located a distance from the worksite in Staten island where he kept all of his equipment.

Because the Court determines that plaintiff's negligence was the sole proximate cause of his injuries, the Court dismisses the action and does not find the need to address the other issues raised by the parties.

In *Robinson v East Mutual Center*, 6 NY3d 550 (2006), the plaintiff also used a six-foot ladder when he should have used an eight-foot ladder, which was available on the premises. This failure, like the failure in the instant action, was the proximate cause of the accident and, as here, there was no claim that the ladder was defective. In *Montgomery v Federal Express*, 4 NY3d 805, 795 NYS2d 490 (2005), the plaintiff used a bucket, turning it upside down to stand on when ladders were available. When he jumped down from the bucket, he injured himself. The Court of Appeals held that he was the sole cause of his injuries and dismissed the action.

Plaintiff attempts to distinguish these cases, arguing that unlike those cases, there was no ladder readily available at the worksite and, also, that before plaintiff is held responsible for his injuries under Labor Law §241(6), it must be shown that there are no Industrial Code violations.

As to the unavailability of the ladder at the worksite, it was plaintiff who caused the unavailability. In the commercial setting of the cases cited above, the ladders were supplied to the plaintiff. There, the inference could be made that if they were not made available, the cause of the plaintiff's injuries could be attributed to those who have the non delegable duty to refrain from negligence. But since this plaintiff chose to bring all of the equipment himself, it was his negligence in not bringing the eight-foot ladder to the worksite that resulted in his injuries. The same reasoning applies to the §241(6) claim. Any violations of the Industrial Code with respect to the ladder was a violation by the plaintiff who assumed full responsibility for the ladder.

Accordingly, it is

**ORDERED** and **ADJUDGED** that the motions by Ruth Trampler, C.N.G. Realty Management Corp., and Constantino Presta for summary judgment dismissing the action are granted; and it is further

Principe v Constantino

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ORDERED and ADJUDGED that the cross-motion for partial summary judgment in favor of Ralph A. Principe, Jr. is denied. No costs are awarded.

Dated: 1/10/08

Enter:

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\_\_\_\_\_  
Louis B. York, J.S.C.

**LOUIS B. YORK**  
**J.S.C.**

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Check If appropriate:     DO NOT POST     REFERENCE