

McCarthy v Railworks Corp.

2008 NY Slip Op 31508(U)

May 27, 2008

Supreme Court, New York County

Docket Number: 0113804/2005

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Justice

Index Number : 113804/2005
MACCARTHY, JOHN
 vs.
RAILWORKS
 SEQUENCE NUMBER : 001
 PARTIAL SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
 JUN 03 2008
 COUNTY CLERK'S OFFICE
 NEW YORK

**motion (s) and cross-motion(s)
 decided in accordance with
 the annexed decision/order
 of even date.**

MOTION/ORDER IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 5/27/08



J.S.C.

JUDITH J. GISCHE, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate

DO NOT POST

REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X

JOHN MACCARTHY,

Plaintiffs,

-against-

RAILWORKS CORPROATION and L. K.
COMSTOCK & COMPANY, INC.,

Defendants.

-----X

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this/these motion(s):

FILED
JUN 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

DECISION/ORDER
Index No.: 113804/05
Seq. No.: 001

Hon. Judith J. Gische
J.S.C.

| Papers | Numbered |
|---|-----------------|
| Pltf's n/m (§3212) w/DLF affirm, JM affid, exhs | 1 |
| Def's n/xmot (§3212) w/ PJM affirm, exhs | 2 |
| Pltf's reply/opp affirm (DLF) | 3 |
| Def's PJM reply affirm | 4 |

Upon the foregoing papers the court's decision is as follows:

In this action, plaintiff John MacCarthy ("MacCarthy" or "plaintiff") seeks to recover monetary damages for personal injuries he claims to have sustained as a result of defendants' violation of the labor laws.

Defendant Railworks Corporation ("Railworks") was the general contractor at a construction project located at 28-20 Jackson Avenue substation in Queens, New York (the "project"). Defendant L.K. Comstock & Company, Inc. ("Comstock"), was an

electrical contractor at the project. Plaintiff now moves for partial summary judgment in its favor on the issue of liability under Labor Law § 240 (1). Defendants cross move for summary judgment dismissing the complaint in its entirety.

Issue has been joined, and since these motions were brought timely after the note of issue was filed, they will be considered on the merits. CPLR § 3212; Brill v. City of New York, 2 NY3d 648 (2004).

Many of the relevant facts are undisputed. MacCarthy was employed as a construction electrician by Heckler Electric Company ("Heckler Electric"). Heckler Electric was an electrical subcontractor at the project. Heckler Electric began working at the project on September 3, 2002. Plaintiff testified at his deposition that his job included renovation and installation of switchgear and conduit. On October 28, 2002, plaintiff was installing steel I-beams to support certain electric switch gear.

The following is based on plaintiff's deposition testimony. On October 28, 2002, MacCarthy was using a wooden ten-foot A frame ladder to access to the switch gear that he was working on. The switch gear was set on a platform that was approximately nine feet above the floor. There is no dispute that the ladder was unsecured. After working on the switch gear platform for approximately an hour and a half, MacCarthy descended the ladder to retrieve some additional material. Plaintiff was on the edge of the switch gear and he put his legs on the third rung of the ladder. He then "grab[bed] hold of the edge of the ladder" and started to descend the ladder when "[t]he ladder slipped and fell." As he fell, MacCarthy states that he reached out to grab the ten-foot steel I-beam to save himself, but the I-beam also fell and landed on his left ankle.

Plaintiff stated that the I-beam was secured "with a clamp." According to plaintiff, the ladder fell to the right, as he was facing it. Plaintiff was the sole witness to the accident.

In his affidavit, plaintiff states:

No one was holding the ladder when the accident happened. I was not provided with a safety belt or any other safety equipment to secure me while I was descending the ladder. The ladder itself was not secured in any way to prevent it from falling. There was no other equipment available to me to perform my work on top of the switch gear.

Plaintiff further testified that there were unsecured sheets of masonite on the floor at the project which were used to protect the floor. Plaintiff stated that the masonite floor covering was not in place when he started working on the project but was installed sometime thereafter. Plaintiff recalled the ladder from which he fell being placed on two 4' by 8' sheets of masonite. Plaintiff further testified:

Q: Before you fell, was there any water or anything else on the floor that would cause the ladder to slip?

A: There was masonite on the floor.

When directly asked if "the ladder slip[ped] because of the masonite sheets", plaintiff responded "I don't know."

Two separate accident reports created on October 28 and October 29 in 2002 indicate that plaintiff alleged that as he "was coming down a ladder he slipped and grabbed an upright piece of steel. He fell to the ground [and] the piece of steel hit the ground and landed on his left ankle." There was no indication that the ladder tipped over in either of the accident reports, which were prepared by plaintiff's foreman on the basis of information provided by plaintiff. There is no dispute that MacCarthy was not

provided with any safety devices to secure him or secure the ladder. There is also no dispute that defendant Comstock's last day of work at the project was August 22, 2002.

Summary of the Parties' Arguments

Plaintiff has asserted causes of action under Labor Law §§ 200, 240 (1) and 241(6). In support of his motion for summary judgment on the § 240 (1) claim, plaintiff argues that the testimony establishes that "both the ladder plaintiff was descending and the steel I-beam which fell onto his ankle were not adequately secured." Plaintiff claims that the "failure of the ladder here to prevent plaintiff's fall, in and of itself, mandates the granting of summary judgment in favor of plaintiffs [sic] as that failure violates the 'core' objective of the statute." Plaintiff also states that the failure to furnish safety equipment that may have protected plaintiff from falling while working on the ladder is a clear violation of Labor Law § 240 (1).

Defendants contend that they are entitled to judgment as a matter of law because they did not direct or control the method, means or manner of plaintiff's work, nor was there any defect in the ladder. Defendants' also claim that the accident reports establish that plaintiff's injury resulted from a condition wholly unrelated to the types of risks protected by Labor Law § 240 (1). Defendants also state that Comstock was "off the job at the time of the accident" and therefore is not liable under Labor Law § 200 and for common law negligence. Finally, defendants maintain that plaintiff's Labor Law § 241(6) should be dismissed because the industrial code provisions are either inapplicable and/or insufficiently specific.

Plaintiff argues in reply that the defendants have failed to submit admissible

evidence and defendants' reliance on the accident reports is misplaced because these reports are unsworn and inadmissible hearsay.

Discussion

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR § 3212; Winegrad v. NYU Medical Center, 64 NY2d 851 [1985]; Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]). Only if it meets this burden, will it then shift to the party opposing summary judgment, who must then establish the existence of material issues of fact, through evidentiary proof in admissible form that would require a trial of this action (Zuckerman v. City of New York, *supra*). If the proponent fails to make out its *prima facie* case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]; Ayotte v. Gervasio, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v. Ceppos, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (Sillman v. Twentieth Century Fox Film, 3 NY2d 395 [1957]). When only issues of law are raised in connection with a motion for summary judgment, the court may and should resolve them without the need for a testimonial hearing (Hindes v. Weisz, 303 AD2d 459 [2d Dept 2003]).

Since each party has moved for summary judgment, each bears the initial burden of establishing entitlement to such relief on their respective motions.

At the outset, the court must grant defendants' motion for summary judgment dismissing plaintiff's claims against Comstock. There is no dispute that defendant Comstock was a prime contractor and was no longer working at the job site at the time of the accident and for approximately two months before. Therefore, Comstock was not the owner's statutory agent on the project at the time of plaintiff's accident (see Walls v. Turner Constr. Co., 10 AD3d 261 [1st Dept 2004]). Based on plaintiff's own testimony, the masonite floor covering was installed only after Comstock left the project. Therefore, liability under the Labor Law and for common law negligence cannot be imposed upon Comstock and, consequently, defendants are entitled to summary judgment dismissing this claim against Comstock.

Labor Law § 240 (1)

Labor Law § 240 (1), also known as the Scaffold Law, was intended "to protect workers in construction projects against injury from the expected risks of inherently hazardous work posed by elevation differentials at the work site" (Buckley v. Columbia Grammar and Preparatory, 44 A.D.3d 263, 267 [1st Dept 2007]).

Labor Law § 240 (1) provides that:

All contractors and owners and their agents..., in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to

give proper protection to a person so employed.

Labor Law § 240 (1) imposes absolute liability for a breach which has proximately caused an injury (Rocovich v Consolidated Edison Co., 78 NY2d 509 [1991]).

"Proximate cause is demonstrated where the plaintiff generally shows that the defendant's negligence was a substantial cause of the events that produced the injury, and the plaintiff need not demonstrate that the precise manner in which the accident happened, or the extent of the injuries, was foreseeable" (Rodriguez v. Forest City Jay Street Associates, 234 AD2d 68 [1st Dept 1996], quoting Public Adm'r of Bronx County v Trump Vil. Constr. Corp., 177 AD2d 258, 259 [1st Dept 1991]). Labor Law § 240 (1) is to be liberally construed so as to accomplish the purpose for which it was enacted (Rocovich v Consolidated Edison Co., *supra*).

Labor Law § 240 (1) "requires that the safety device made available must not only allow the worker to safely perform the work at an elevation without falling, but also to safely ascend to the necessary height, and safely descend back to the floor thereafter" (Cohen v. Memorial Sloan-Kettering Cancer Center, 50 A.D.3d 227 [1st Dept 2008] (internal citations omitted)).

A ladder falls within the category of "safety devices" under Labor Law § 240 (1). Where a ladder is offered as a work-site safety device, it must provide the proper protection; the failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240(1) (Schultze v. 585 W. 214th St. Owners Corp., 228 AD2d 381 [1st Dept 1996]).

As an initial matter, the court rejects plaintiff's contention that the accident reports

prepared by plaintiff's foreman, which were annexed to plaintiff's motion-in-chief, are inadmissible hearsay. It appears that these reports were kept in the normal course of business and are recorded within a reasonable time after the occurrence, in conformity with CPLR § 4518 (a). Moreover, the contents of the reports seem to consist of plaintiff's own admissions, and for the foregoing reasons, the accident reports would constitute a business record exception to the hearsay rule (Matter of Leon RR, 48 NY2d 117 [1979]; *cf.* Holliday v. Hudson Armored Car & Courier Service, Inc., 301 AD2d 392 (1st Dept 2003), *app. dismissed and den. in part*, 100 N.Y.2d 636 (2003); see also Boccia v. City of New York, 46 A.D.3d 421 (1st Dept 2007)].

Summary judgment should be granted under Labor Law § 240 (1) where the effects of gravity cause an injury due to the failure of one of the devices enumerated in the statute to be properly constructed, operated or placed. Here, there is no dispute that the only elevation-related safety device provided to plaintiff was the ladder, which slipped and/or tipped over. It is also undisputed that no safety devices were provided to secure the ladder and prevent it from slipping/tipping or prevent plaintiff from falling. Therefore, plaintiff has established, *prima facie*, a violation of Labor Law § 240 (1) (see Tavarez v. Weissman, 297 AD2d 245 [1st Dept 2002]; see also Rudnik v. Brogor Realty Corp., 45 AD3d 828 [2d Dept 2007]; Guaman v. New Sprout Presbyterian Church of New York, 33 AD3d 758 [2d Dept 2006]; Morin v. Machnick Builders, Ltd., 4 AD3d 668 [3d dept 2004]).

Moreover, even if the ladder tipped over due to the insecure masonite floor coverings, as defendants claim, defendants are incorrect in their assertion that the

accident would not fall within the ambit of Labor Law § 240 (1). Labor Law § 240 (1) requires that safety devices such as ladders be so “constructed, placed and operated as to give proper protection to a worker. The unsecured masonite floor coverings did not pose an ordinary workplace danger (Mattingly v. AES Corporation, 291 NYS2d 862 (4th Dept 2002). Defendants’ failure to ensure proper placement of the ladder due to the condition of the floor could support a finding that Labor Law § 240 (1) was violated (see e.g. Morrin v. Machnick Builders, Ltd., *supra*). If this ladder should not have been placed upon masonite floor coverings because it would thereby be rendered unstable, then the ladder was not an adequate safety device for plaintiff to perform his work, considering the conditions of this worksite (see also Limauro v. City of New York Dept. of Environmental Protection, 202 AD2d 170 [1st Dept 1994]; McCoo v. Lollytogs, Ltd., 251 AD2d 195 [1st Dept 1998]; *cf.* Kvandel v. Westminster Presbyterian Society of Buffalo, Inc., 238 AD2d 889 [4th Dept 1997]).

This situation is factually similar to Cohen v. Memorial Sloan-Kettering Cancer Center, where the First Department held that “[j]ust as it would be a violation of section 240(1) to provide a worker with a non-defective six-foot ladder in circumstances where a 10-foot ladder was necessary to perform the assigned task, plaintiff here established that the device he was provided, though not itself defective, and sufficient for the task at other portions of the worksite, was insufficient to permit him to safely perform the elevated task at that particular part of the worksite” (id. at 230).

Nonetheless, plaintiff has established that defendants violated Labor Law § 240 (1) by failing to provide adequate safety devices. This statutory violation was a

proximate cause of plaintiff's fall. Accordingly, plaintiff is entitled to partial summary judgment on the issue of liability under Labor Law § 240 (1).

MacCarthy also asserts a "falling object" argument, based upon the fact that the "I-beam fell and struck [him]," in support of his Labor Law § 240 (1) claim. However, the I-beam that plaintiff grabbed and which landed on plaintiff when he fell does not support a Labor Law § 240 (1) cause of action. This clearly was not a situation where a hoisting or securing device of the kind enumerated in the statute would have been necessary. The I-beam was not a moving object. MacCarthy's act of pulling the I-beam set this object in motion and, therefore, the absence of a necessary hoisting or securing device of the kind enumerated in Labor Law § 240 (1) did not cause the I-beam to fall. This situation is similar to the case of Buckley v. Columbia Grammar and Preparatory, where a piece of glass fell on the plaintiff, and the court held: "[t]his was clearly a general hazard of the workplace, not one contemplated to be subject to Labor Law § 240 (1)" (44 A.D.3d at 268 [1st Dept 2007]).

Accordingly, plaintiff's motion for summary judgment on the issue of liability on his Labor Law § 240 (1) claim is granted. Defendants' cross motion to dismiss this claim is denied.

Labor Law § 200 claim and common law negligence

Defendants also cross move for summary judgment dismissing plaintiff's claims under Labor Law §§ 200 and 241 (6).

Labor Law § 200 codifies the common law duty imposed upon an owner or general contractor to maintain a safe construction site (Rizzuto v. L.A. Wenger

Contracting Co., supra). Unlike Labor Law §§ 240 (1) and 241 (6), liability can only be imposed if the defendant has actually been negligent. A *prima facie* case requires that plaintiff prove the defendant exercised supervisory control over the work performed or had actual or constructive notice of the dangerous condition alleged, or created the condition (Sheridan v. Beaver Tower Inc., 229 AD2d 302 [1st Dept 1996] *lv den* 89 NY2d 860 [1996]; O'Sullivan v. IDI Construction Co., Inc., 7 NY3d 805 [2006]; Rizzuto v. L.A. Wenger Contracting Co., *supra* at 352; Gonzalez v. United Parcel Serv., 249 AD2d 210 [1st Dept 1998]).

Where the alleged defect or dangerous condition arises from the [sub]contractor's methods, and the owner exercised no supervisory control over the operation, no liability will be imposed on the owner or general contractor under either the common law or Labor Law § 200 (Comes v. New York State Elec. & Gas Corp., 82 NY2d 876 [1993]; Ross v. Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 505 [1993]). Simply having a general right to supervise the work, or retaining contractual inspection privileges is insufficient to constitute supervisory control so as to impose liability on an owner or general contractor under Labor Law § 200 or a common law negligence claim (Hughes v. Tishman Construction Corp., 40 AD3d 305 [1st Dept 2007]; Brown v. New York City Economic Dev. Corp., 234 AD2d 33 [1st Dept 1996]; Gonzalez v. United Parcel Serv., *supra*). It must be shown that the contractor controlled the manner in which the plaintiff performed his or her work, i.e. how the injury producing work was performed (Hughes v. Tishman Construction Corp., *supra* at 2).

The cross motion to dismiss plaintiff's Labor Law § 200 claim against Railworks

must be denied. Although Railworks claims it did not supervise the work, plaintiff has raised factual disputes about whether Railworks actually created the hazardous condition leading to plaintiff's injuries. Among other facts left to be decided is whether Railworks created the hazard with respect to the masonite floor coverings that may have caused plaintiff's injury.¹

Labor Law § 241 (6)

Section 241 (6) of the Labor Law imposes "a nondelegable duty upon an owner or general contractor to respond in damages for injuries sustained due to another party's negligence in failing to conduct their construction, demolition or excavation operations" in a manner that provides for the reasonable and adequate protection of persons working at the site (Rizzuto v. L.A. Wenger Contracting Co., Inc., 91 NY2d 343, 350 [1998]). Supervision of the work, control of the work site or actual or constructive notice of a violation of the Industrial Code is not necessary to impose vicarious liability against owners and general contractors, so long as someone in the construction chain was negligent (Rizzuto v. L.A. Wenger Contracting Co., Inc., *supra*; DeStefano v. Amtad New York, Inc., 269 AD2d 229 [1st Dept 2000]). To support a cause of action, the plaintiff must plead a concrete specification of the Industrial Code, that it was violated, and that the violation was a proximate cause of his injuries (Rizzuto v. L.A. Wenger, *supra*).

¹ While the court is mindful that because the courts' finding of liability as a matter of law under Labor Law § 240 (1), the plaintiff may withdraw this claim and proceed directly to a trial on damages, the court is still addressing the issues in the procedural posture that this case was presented at the time of the submission of the motions.

Defendants argue that plaintiff has failed to cite a concrete specification of the Industrial Code, as opposed to general sections that would not be an adequate predicate basis for a Labor Law § 241 (6) cause of action (Ross v. Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494 [1993]). Plaintiff has alleged violations of five provisions of the Industrial Code, to wit: § 23-1.5 (Protection in Construction, Demolition and Excavation Operations; General Responsibility of employers); § 23-1.7 (f) (Protection in Construction, Demolition and Excavation Operations; Protection from general hazards; Vertical passage); § 23-1.16 (Protection in Construction, Demolition and Excavation Operations; Safety belts, harnesses, tail lines and lifelines); § 23-1.21 (Protection in Construction, Demolition and Excavation Operations; Ladders and ladderways); and § 23-2.1 (a) (Construction Operations; Maintenance and housekeeping; Storage of material or equipment). Plaintiff has also alleged violations of the Occupational Safety & Health Administration regulations, namely, 29 CFR § 1926.20, 1926.285, 1926.104 and 1926.450 (collectively the "OSHA regulations"). Plaintiff argues in opposition to the cross motion that the alleged violation of § 23-1.21 is sufficient to support his § 241 (6) cause of action.

Well settled law has held that Industrial Code § 23-1.5 sets forth only general safety standards, and, therefore, this provision is insufficient to support a Labor Law § 241 (6) cause of action (see Murray v. Lancaster Motorsports, Inc., 27 AD3d 1193 [2006], Fairchild v. Servidone Const Corp, 288 AD2d 665 [3d Dept 2001]). Industrial Code § 23-1.7 (f), which applies to stairways, ramps or runways is not applicable here where plaintiff was provided a ladder and there is no dispute that it was not conducive to

construct a stairway, ramp or runway for plaintiff to access the subject area (see i.e. Lavore v. Kir Munsey Park 020, LLC, 40 AD3d 711). Industrial Codes § 23-1.16 is inapplicable because it sets forth safety standards for safety belts, harnesses, tail lines and lifelines, and none of these safety devices were provided to plaintiff. The OSHA regulations are inapplicable as well because they impose no duty on a non-supervising owner or general contractor (see Rizzuto v. L.A. Wenger, *supra* at 351-52).

Industrial Code § 23-1.21 (b) sets forth general requirements for ladders. Based upon plaintiff's description of how his accident happened, Industrial Code § 23-1.21 is relevant and applicable to the facts of this case, as alleged. Moreover, defendants have failed to submit sufficient evidence that the ladder did not violate this provision of the Industrial Code. Plaintiff's affirmative response when asked "was the ladder in fact sturdy" does not preclude a finding that the ladder nonetheless constituted a violation of this provision. There is no dispute that the ladder slipped and/or tipped over. A reasonable jury could conclude that the ladder was not capable of sustaining plaintiff without breakage [§ 23-1.21 (b) (1)], that the ladder was not maintained in good condition [§ 23-1.21 (b) (3)], or that the ladder footings were not firm [§ 23-1.21 (b) (4) (ii)].

Although Industrial Code § 23-2.1 (a) (1) is inapplicable because plaintiff's injury did not take place in a passageway, walkway or other thoroughfare (see Cafarella v. Harrison Radiator Div. Of General Motors, 237 AD2d 936), the court rejects defendants' argument that Industrial Code § 23-2.1 (a) (2) does not apply here. Industrial Code § 23-2.1 (a) (2) provides that "[m]aterial and equipment shall not be placed or stored

so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge." Defendants have failed to establish that the I-beam was not placed or stored in an unsafe manner.

Based on the foregoing reasons, defendants have not proven their legal argument, that Industrial Code §§ 23-1.21 (b) (1), 23-1.21 (b) (3), 23-1.21 (b) (4) (ii) and 23-2.1 (a) (2) are insufficient and/or inapplicable. Accordingly, defendants have not met their burden on this motion for summary judgment dismissing the Labor Law § 241 (6) claim. In any event, plaintiff has presented factual disputes that require resolution.²

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion for summary judgment on the issue of liability on his Labor Law § 240(1) claim is granted against defendant Railworks, only; and it is further

ORDERED that defendants' cross motion for summary judgment is granted only to the following extent: [1] that the complaint against defendant Comstock is hereby severed and dismissed; and [2] that the Labor Law § 241 (6) cause of action premised on Industrial Code §§ 23-1.5, 23-1.7 (f), 23-1.16, 23-2.1 (a) (1) and 29 CFR § 1926.20, 1926.285, 1926.104 and 1926.450 is hereby severed and dismissed; and it is further

ORDERED that defendants' cross motion is otherwise denied.

The issue of plaintiff's damages is ready to be tried. Plaintiff shall serve a copy of this decision/order on the Clerk in Trial Support so that this case can be scheduled for


² See footnote 1.

jury selection.

Any requested relief that has not been addressed herein has nonetheless been considered and is hereby expressly denied.

This shall constitute the decision and order of the court.

Dated: New York, New York
May 27, 2008

So Ordered: 

Hon. Judith J. Gische, JSC

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JUN 03 2008
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