

<b>Grove v Cornell Univ.</b>
2009 NY Slip Op 33427(U)
September 14, 2009
Supreme Court, Tompkins County
Docket Number: 2007-0963
Judge: Robert C. Mulvey
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

---

RECEIVED/FILED  
TOMPKINS COUNTY CLERK  
2009 SEP 15 AM 11:51

DALLAS M. GROVE,

Plaintiff,

-vs-

Index No. 2007-0963

CORNELL UNIVERSITY and  
SKANSKA USA BUILDING, INC.,

Defendants.

---

MULVEY, J.

AMENDED DECISION

**John A. Collins, Esq.**  
Lipsitz Green Scime Cambria LLP  
Attorneys for Plaintiff  
42 Delaware Ave., Suite 120  
Buffalo, NY 14202

**John L. Perticone, Esq.**  
Levene Gouldin & Thompson, LLP  
Attorneys for Defendants  
P.O. Box F-1706  
Binghamton, NY 13902-0106

This action arises out of a claimed violation of Section 240(1) of the Labor Law. The plaintiff alleges that he was not provided with an adequate safety device (a metal basket on a boom lift) while working on exterior window openings at the Life Sciences Building on the campus of Cornell University. He further alleges that, as a result, he fell out of the basket a distance of thirty feet to the concrete surface below, sustaining significant injuries.

The undisputed facts are that on August 22, 2007, the plaintiff was employed by Clayton B. Obersheimer, Inc. (“CBO”) as a glazier. CBO was a subcontractor to general contractor Skanska USA Building, Inc., (“Skanska”), on the premises of owner Cornell University. The plaintiff and co-worker William Sobel stepped into the metal basket work platform of a boom lift for the purpose of ascending to a height that would enable them to install metal brackets and rubber membranes on the window openings.

Both men were wearing harnesses with attached lanyards. Sobel entered the metal basket at the end of the boom and hooked his lanyard to the basket. The plaintiff followed Sobel into the basket yet did not hook his lanyard to the basket. They ascended to a point where Sobel began his work at a window opening. Sobel felt the basket shake. He turned and saw that the plaintiff had fallen through the gate. The gate had not been latched shut.

The basket is enclosed on three sides by a permanently affixed metal railing. The fourth side contains a metal gate that swings inward on a pair of hinges. The gate was spring-loaded and was supposed to close whenever it was not being held open. A spring in one of the hinges was broken and the gate did not shut on its own.

However, the gate was equipped with a latch that allowed the gate to be secured. The latching mechanism was in good working order.

The plaintiff contends that the defective spring rendered the boom lift/gate inadequate under Section 240 and that it was a proximate cause of his fall. The defendants contend that the boom lift/gate and safety harness did provide the plaintiff with proper protection and that the plaintiff's failure to close the gate and/or use the harness constituted the sole proximate cause of the accident.

The plaintiff moves for partial summary judgment pursuant to CPLR 3212 on the Labor Law Section 240 cause of action and the defendants cross-move for summary judgment dismissing the entire complaint, including the plaintiff's claim under Labor Law Section 240(1) and the plaintiff's claims for relief under Labor Law Sections 241(6) and 200.

Counsel for the parties have agreed that those portions of the defendants' cross-motion seeking dismissal of the plaintiff's claims under Labor Law Section 241(6) and 200 shall be held in abeyance and argued before the Court at a later date if circumstances so dictate.

## DISCUSSION

In order for a plaintiff to demonstrate entitlement to summary judgment on an alleged violation of Labor Law Section 240(1), he must establish that there was a violation of the statute and that the violation was a contributing cause of his injury.

**Blake v. Neighborhood Housing Services, et al.**, 1 NY3d 280 (2006) If adequate safety devices are provided and the worker either chooses not to use them or misuses them, then liability under section 240(1) does not attach. **Cherry v. Time-Warner, Inc.**, \_\_ AD3d \_\_\_, (First Dept., 2009)(NYLJ, 8/24/09)

The question presented is whether the broken spring rendered the boom lift/basket "inadequate" so as to constitute a failure to furnish equipment "so constructed...as to give proper protection."

There is no proof that any of the safety equipment furnished to the plaintiff was

defective or inadequate for the task. The boom lift/gate had a working latch and the plaintiff was furnished with a harness and lanyard. The plaintiff has failed to cite any proof that the spring was necessary to give proper protection to the plaintiff and therefore has failed to demonstrate any issue of fact in that regard.

The plaintiff failed to use the harness and lanyard. It is undisputed that if the plaintiff had used the safety harness and lanyard he would not have fallen from the basket. The Court finds, as a matter of law, that the sole proximate cause of the plaintiff's fall was his "failure to use the otherwise adequate safety device." **Albert v. Williams Lubricants, Inc.**, 35 AD3d 1115 (Third Dept., 2006)

## CONCLUSION

For the reasons set forth herein the cause of action under Section 240(1) is dismissed.

The plaintiff's motion is denied and the defendants' cross-motion to the extent it seeks dismissal of the plaintiff's cause of action under Section 240(1), is granted. Those portions of the defendants' cross-motion seeking dismissal of the plaintiff's causes of action under Sections 241(6) and 200 shall be held in abeyance pursuant to the agreement

reached by counsel for the parties.

Signed this 14<sup>TH</sup> day of September 2009, at Ithaca, New York.

A handwritten signature in cursive script, appearing to read "Robert C. Mulvey".

---

ROBERT C. MULVEY, J.S.C.