New York Court of Appeals Sides With Defendants In Three Separate Labor Law § 240(1) Scenarios

On April 28, 2022, the Court of Appeals sided with defendants in three factually and procedurally distinct Labor Law § 240(1) cases. This is an important step towards returning a measure of sanity to New York's one of a kind Labor Law.

Cutaia – ***Summary Judgment to Plaintiff Reversed***

Plaintiff in Cutaia v Board of Mgrs. of the Varick St. Condominium, 2022 NY Slip Op 02834, was required cut and reroute ceiling pipes located near electrical wiring in order to move sinks from one bathroom to another. To reach the pipes, he used an A-frame ladder, but due to spatial limitations, leaned the ladder against the wall in the closed and unlocked position. While working from the ladder, he received an electric shock and fell to the ground, suffering burns as well as injuries to his spine and shoulder. Plaintiff remembered nothing about his fall, including whether the ladder fell to the ground or if he was thrown from it after being electrocuted.

The First Department majority granted plaintiff's motion for summary judgment (172 AD3d 424), finding that electric shock was not excluded from Labor Law § 240(1)'s protection and agreeing with plaintiff's expert that the ladder should have been secured. Finding the expert's affidavit conclusory, however, the Court of Appeals reversed. The Court agreed with the First Department dissent "that plaintiff was not entitled to partial summary judgment on his Labor Law § 240 (1) claim" because "questions of fact exist as to whether 'the ladder failed to provide proper protection,' whether 'plaintiff should have been provided with additional safety devices,' and whether the ladder's purported inadequacy or the absence of additional safety devices was a proximate cause of plaintiff's accident."

Bonczar – ***Defense Verdict Affirmed***

While retrofitting a fire alarm system, plaintiff in Bonczar v American Multi-Cinema, Inc., 2022 NY Slip Op 02835, climbed up and down to the third or fourth step of a ladder several times without issue, but when he began to descend a final time the ladder shifted and wobbled, causing him to fall. Supreme Court granted him partial summary judgment on his Labor Law § 240(1) claim, but the Fourth Department reversed, finding a factual issue on whether a statutory violation had occurred and if plaintiff's own acts and omissions, particularly as to the ladder's positioning and his failure to check the locking mechanisms, were the sole proximate cause of his injury (158 AD3d 1114).

The § 240(1) claim was then tried to a defense verdict. The jury found no statutory violation and that plaintiff's failure to position the ladder properly was the sole proximate cause of his injuries. After the Appellate Division affirmed the judgment of dismissal, the Court of Appeals

granted plaintiff leave and affirmed as well, holding that "[a] rational trier of fact could have found in defendant's favor on the Labor Law § 240 (1) claim."

" * * * not every worker who falls from a ladder is entitled to automatic statutory recovery."

Healy – ***Summary Judgment Dismissal***

The issue in Healy v Est Downtown, LLC, 2022 NY Slip Op 02836 turned on whether plaintiff was engaged in "cleaning" as encompassed by Labor Law § 240(1). Plaintiff was a maintenance and repair technician on the maintenance - not janitorial - staff of a building. His regular duties included readying rental properties for incoming tenants by, inter alia, repairing fixtures and painting, as well as responding to work orders from his employer for repairs. On the day of the accident, plaintiff responded to a "pest control" work order filed by a commercial tenant concerning bird droppings from a nest lodged in a gutter above the tenant's entryway. Plaintiff was injured when, while attempting to remove the nest, he fell from an unsecured eight-foot ladder that moved when a bird suddenly flew out of the nest.

Applying the relevant four-part test, the Fourth Department found plaintiff engaged in "cleaning" within the meaning of Labor Law § 240(1) (191 A.D.3d 1274). Looking to its precedent in Soto v J. Crew Inc. (21 NY3d 562), the Court of Appeals reversed, however, as plaintiff failed just the first element, observing (emphasis in original):

> The first factor considers whether the work is "routine, in the sense that it is the *type* of job that occurs on a daily, weekly or other relatively-frequent and recurring basis as part of the ordinary maintenance and care of *commercial premises*" (*id.* [emphasis added]). This factor does not involve a fact-specific assessment of a plaintiff's regular tasks—it instead asks whether the type of work would be expected to recur with relative frequency as part of the ordinary maintenance and care of a commercial property (*see id.* at 569).
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> Here, plaintiff's work was "routine" within the meaning of the first factor, which therefore weighs against concluding that he was "cleaning." "[V]iewed in totality," the *Soto* factors do not "militate in favor of placing the task" in the category of "cleaning" (*id.* at 568-569).

The Takeaway

As Labor Law § 240(1) precedent from the Court of Appeals is generally few and far between, this trio of defense victories strongly reaffirms the often judicially ignored maxim that not every worker who falls from a ladder is entitled to automatic statutory recovery. Rather, the facts and law still matter. So, developing a solid factual record and ventilating the legal issues can shape the landscape in defendants' favor through appellate review.

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