TRAUB LIEBERMAN

NEWS & EVENTS

July 2, 2020

Traub Lieberman Partner Colleen E. Hastie Obtains Appellate Division Affirmation of Lower Court's Denial of Plaintiff's Summary Judgment Motion in a NY Labor Law §240(1) Claim

Related Attorneys:

On July 1, 2020, following briefing and oral argument by Traub Lieberman partner, Colleen E. Hastie, Second Department Appellate Division affirmed the decision of Justice Wayne Saitta from New York State Supreme Court, Kings County, denying plaintiff's motion for summary judgment seeking judgment on plaintiff's Labor Law §240(1) cause of action.

Plaintiff alleges he was working on an exterior third floor balcony when the horizontal safety line he was using failed, causing him to fall to the ground. Plaintiff commenced suit against the property owner, general contractor and scaffold contractor. Traub Lieberman appeared on behalf of the scaffold contractor. Plaintiff alleges defendants collectively violated Labor Law §240(1) by failing to provide a proper safety line and erecting scaffold in a manner that did not provide proper fall protection to plaintiff.

Justice Wayne Saitta denied plaintiff's summary judgment motion in its entirety finding that defendants raised an issue of fact as to whether plaintiff was acting outside the scope of his authority when the alleged incident occurred. Justice Saitta further held that plaintiff failed to establish that the scaffold contractor was subject to Labor Law §240(1) liability as an owner, general contractor or agent of the owner and subcontractor.

On appeal, plaintiff argued for the first time that the scaffold contractor's employees supervised and controlled plaintiff's work at the site rendering it an agent of owner and/or general contractor. In response and on oral argument, Traub Lieberman argued that (i) plaintiff is not permitted to present new facts and evidence on appeal; and (ii) the purported evidence that scaffold contractor supervised plaintiff's work is expressly contradicted by testimony from scaffold contractor's, general contractor's and owner's respective witnesses.

The Appellate Division agreed with Traub Lieberman's arguments and affirmed the lower court's decision finding that plaintiff's submissions failed to establish that scaffold contractor was subject to liability as an owner, general contractor, or statutory agent.

YAGUACHI V PARK CITY 3 AND 4 APARTMENTS, INC. APPELLATE DECISION

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