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New York Court of Appeals Finds Question of Fact Where Plaintiff Sustained Electric Shock and Fell From Ladder

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In *Nazario v 222 Broadway, LLC*, 2016 N.Y. LEXIS 3534 (N.Y. Nov. 21, 2016), plaintiff was performing electrical work as part of a retrofitting or renovation, and was reaching up while standing on the third or fourth rung of a six-foot A-frame wooden ladder, when he received an electric shock from an exposed wire and fell to the floor, holding the ladder, which remained in an open, locked position when it landed. According to the Appellate Division, First Department, plaintiff established prima facie that the ladder from which he fell did not provide adequate protection pursuant to Labor Law § 240(1). See *Nazario v 222 Broadway, LLC*, 135 A.D.3d 506, 507 (1st Dep't 2016). However, on November 21, 2016, the Court of Appeals disagreed and found that plaintiff was not entitled to summary judgment on his Labor Law §240(1) claim, remitting the case back to the Appellate Division and stating that questions of fact existed as to whether the ladder plaintiff was using failed to provide proper protection, and whether plaintiff should have been provided with additional safety devices.

This appears to be a departure from prior case law such as *Vukovich v 1345 Fee, LLC*, 61 A.D.3d 533 (1st Dept 2009) (summary judgment granted on Labor Law § 240(1) where plaintiff fell from an unsecured ladder after receiving electric shock while working as a pipe fitter), and suggests that the First Department will now require plaintiffs to show that the safety device provided was either defective or that the plaintiff required additional safety devices to conduct the work they were performing at the time of the incident.