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CONSTRUCTION LAW BLOG

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Elevator Considered "Falling Object" Under New York Labor Law §240(1)

BY:

In *McCrea v. Arnlie Realty Co. LLC*, 2016 N.Y.App.Div LEXIS 4215 (1st Dep't June 7, 2016), plaintiff, an elevator repairman, was present at defendant's property to investigate a scraping noise that could be heard while the elevator was in use. In order to investigate, plaintiff first rode in the elevator to hear the noise, and then attempted to investigate the safety underneath the elevator cab. Plaintiff manually raised the cab to halfway between the first and second floor while he was in the elevator pit beneath, three to four feet below ground level. While plaintiff was inspecting the safety, the elevator suddenly descended and pinned plaintiff, causing injuries.

The court found that plaintiff was engaged in a repair rather than routine maintenance (which would not have been subject to the strict liability under New York Labor Law 240(1)) because the elevator shoes were not working at the time of the accident and the work plaintiff was performing was unrelated to normal wear and tear. Indeed, because the item at issue did not have a limited lifespan which would require replacement on a periodic basis, the trial court held that it could not be considered routine maintenance. Additionally, the trial court found that an elevator need not be inoperable for the work to constitute repair.

New York Labor Law §240(1) imposes absolute liability upon owners and general contractors for injuries sustained due to gravity related risks including falling objects, which are in the process of being hoisted or secured. Finding that the elevator cab could be considered a falling object for purposes of the statute, the court relied on a line of cases applying the Labor Law where falling objects required securing for the purposes of the undertaking. Here, plaintiff was working below an elevator cab, which the court found required securing for purposes of the repair. No evidence was proffered to suggest that plaintiff refused or misused the available safety equipment. The First Department therefore affirmed the grant of summary judgment in favor of plaintiff and the denial of summary judgment to defendant on Labor Law §240(1), thus establishing liability as a matter of law. Defendant also moved for summary judgment seeking dismissal of the Labor Law 200 claims, but the court denied that motion, finding that issues of fact existed as to whether defendant had supervisory control over the means and methods of plaintiff's work, whether the provision of a service agreement which required shutting down of the power to the elevator had been waived, and whether defendant ever gave specific instructions to Plaintiff.