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CONSTRUCTION LAW BLOG

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New York Court of Appeals Takes Narrow View of Labor Law Provisions in Recent Cases

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Since the end of March, the New York State Court of Appeals has issued decisions in favor of the defense concerning New York Labor Law §240 and §241. These pro-defendant decisions take a narrow view of the scope of the Labor Law provisions. However, while it remains to be seen how the Court's below will apply the Court of Appeal's reasoning, these recent decisions are beneficial for the defense bar going forward.

In *Toussaint v Port Auth. of N.Y. & N.J* March 22, 2022 N.Y. LEXIS 391 | 2022 NY Slip Op 01955 | 2022 WL 837579, the Court held that 12 NYCRR 23-9.9 (a), does not set forth a concrete specification sufficient to give rise to a non-delegable duty under Labor Law § 241 (6). In *Toussaint* Plaintiff, who was an employee of Skanska USA Civil Northeast, Inc., brought the lawsuit against the Port Authority asserting claims under Labor Law § 200 (1) and Labor Law § 241 (6) after he was struck by a power buggy while operating a rebar-bending machine at the World Trade Center Transportation Hub construction site owned by the Port Authority of New York and New Jersey. Power buggies are small, self-operated vehicles used to move materials on construction sites. On the day of the accident, a trained and properly designated operator drove the buggy into the area near the plaintiff's workstation. That vehicle operator got off the vehicle, but short time thereafter, another worker—who was not designated or trained to do so—drove the buggy a short while prior to losing control and striking plaintiff. Plaintiff relied upon 12 NYCRR 23-9.9(a) which states that "[no person other than a trained and competent operator designated by the employer shall operate a power buggy." In rejecting plaintiff's argument the Court held that the "trained and competent operator" requirement is general, as it lacks a specific requirement or standard of conduct.

In *Bonczar v American Multi-Cinema, Inc*. April 28, 2022 N.Y. LEXIS 876 | 2022 NY Slip Op 02835 Plaintiff David Bonczar was injured when he fell from a ladder while retrofitting a fire alarm system working at a movie theater. After climbing up and down to the third or fourth step of the ladder several times without issue, he began to descend a final time when the ladder shifted and wobbled. Plaintiff fell and was injured. Plaintiff brought this action seeking damages for violations of Labor Law § 240 (1) and moved for partial summary judgment as to that claim. The Supreme Court granted partial summary judgment on the issue of section 240 (1) liability for plaintiff. The Appellate Division reversed, with two Justices dissenting, holding that plaintiff failed to show he was entitled to judgment as a matter of law. The Appellate Division held a factual issue existed as to whether a statutory infraction had transpired and if plaintiff's own acts and omissions, particularly as to the ladder's positioning and plaintiff's failure to check if the ladder was locked, were the sole proximate cause of his injury. On remand, plaintiff's Labor Law § 240 (1) claim was tried before a jury and at the close of evidence, plaintiff sought a directed verdict. The Court reserved judgment and the jury returned a verdict for defendant, finding no violation of Labor Law § 240 (1) and that plaintiff's failure to position the ladder properly was the sole proximate cause of the injuries alleged. As to the issue of the Labor Law § 240 (1) claim, in affirming the holding below, the Court of Appeals held that a rational trier of fact could have found in defendant's favor.

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In *Healy v EST Downtown, LLC,* April 28, 2022 N.Y. LEXIS 875 | 2022 NY Slip Op 02836 the Court of Appeals held that in order to recover under section Labor Law § 240 (1) for injuries caused by a failure to provide certain safety devices, plaintiffs must initially show that they were engaged in one of the section's enumerated activities including, but not limited to, "cleaning." In order to determine whether an activity is "cleaning" within the meaning of the statute, a four-factor approach must be applied. The first factor considers whether the work is routine, such as a job that transpires daily, weekly, or other relatively-frequent and recurring basis as part of the ordinary maintenance and care of subject premises. The Court stated that this factor does not involve a fact-specific assessment of a plaintiff's regular task but 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. In holding that the plaintiff's work did fall within the scope of Labor Law § 240 (1), the plaintiff's work was found to be "routine", which weighed against finding that he was "cleaning."

In *Cutaia v Board of Mgrs. of the 160/170 Varick St. Condominium,* April 28, 2022 N.Y. LEXIS 877 | 2022 NY Slip Op 02834 plaintiff brought an action based upon injuries sustained while working on a building renovation project. Plaintiff's job duties included moving sinks from one area of a bathroom to another and required plaintiff to cut and reroute pipes in the ceiling that were located near electrical wiring. To reach the pipes, the plaintiff used an A-frame ladder but the limitations in space necessitated leaning the ladder against the wall in the closed and unlocked position. While standing on the ladder and attempting to connect two pipes, plaintiff received an electric shock and fell to the ground. As a result of the accident, plaintiff suffered electrical burns to his left hand and the left side of his torso from his chest to his hip, as well as injuries to his spine and shoulders. Plaintiff was unable to recall anything about his fall, including whether he lost consciousness, whether the ladder fell to the ground, or whether he was thrown from the ladder after being electrocuted. The Court of Appeals ruled that the plaintiff should not have been awarded summary judgment because questions of fact exist as to whether the ladder failed to provide proper protection, whether the 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 the plaintiff's accident.

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