

New York Labor Law Update

KSLN attorneys keep abreast of ongoing issues surrounding Labor Law 200, 240, and 241. The Business Council of New York State and various interest groups continue to address the many controversial issues surrounding New York's scaffolding law on an ongoing basis. KSLN provides an ongoing summary of New York State cases involving New York Labor Law. For a copy of any of the cases noted below or to discuss a case, you can call or e-mail Robert D. Leary, Esq. or Wendy A. Scott, Esq.

Labor Law §200: Driver hit by waste covered by Labor Law §200: While waiting for his trailer to be unloaded, a tractor trailer driver was struck by a waterlogged bale of waste paper weighing more than 1000 pounds. The bale fell from a stack on the defendant's loading dock. Defendants contended that the Labor Law §200 cause of action should have been dismissed because plaintiff was not engaged in construction work or injured at a construction site. However, the Court held that statute is not limited to construction work or construction workers. Pursuant to Labor Law §200, a land owner has a duty to provide workers with a reasonably safe place to work. Moreover, plaintiff was not required to show that the defendant controlled his work. Defendants were the owners and thus plaintiff only needed to establish they had actual or constructive notice of the dangerous condition. *Beadleston v. American Tissue Corporation*, -AD3d - (3rd Department, 2007).

Labor Law §200: General contractor not responsible for plaintiff's accident assembling crane: Plaintiff was the employee of a subcontractor and, pursuant to his employer's instructions, used a wood beam to support the jib of a crane while dismantling the crane. He was injured when the beam struck him. Plaintiff sued the general contractor for the construction site. The Court held that this accident stemmed not from a dangerous condition of the premises, but from the manner in which the work was being performed. Defendant established that it did not have authority to supervise or control the plaintiff's work in disassembling the crane. The plaintiff failed to submit any evidence of defendant supervising control over the activity giving rise to the injury. Thus, summary judgment dismissing Labor Law §200 claim was granted. *McLeod v. Corporation of Presiding Bishop of Church of Jesus Christ of Later Day Saints*, - AD3d - (2nd Dept., 2007).

Labor Law §240: Plaintiff's fall from a truck's platform is a Labor Law §240 cause of action: Plaintiff was unloading curtain wall panels from the platform of a truck. The truck's platform was approximately 4 ½ feet off the ground. The stacks of curtain walls were approximately 10 feet high and secured by cross braces. In order to unload a panel, plaintiff had to attach a strap to an individual panel so that it could be hoisted from the truck for installation. Plaintiff was not given an ladder or any other safety device to reach the top of the stack. To the top of the stack, he climbed up onto the flat bed and then onto the wooden cross braces of each stack. Plaintiff claims that the stacks and trucks were slippery from rain and that he was climbing he slipped and fell to the ground. Court held that plaintiff's injury was caused by falling from a height or performing an activity covered by Labor Law §240(1). *Ford v. HRH Construction Corporation*, - NY3d - (2nd Dept., 2007).

Labor Law §240: Raft/Floating Platform is an elevated work site under Labor Law §240: Plaintiff was employed as a dock builder and was hired to replace a deteriorating bulk head. He was working from a "floating stage" on the surface of the creek that gave him access to the bulk head. The floating stage was made of wood no wider than four feet and was approximately ten feet long. Plaintiff claims that while working and taking measurements the floating stage shifted from beneath his feet, causing him to hang. After several unsuccessful attempts to pull himself up, his hands slipped out of the hole. He fell and landed in the water, but struck his arm pit and elbow on the corner of the floating stage. Court held that plaintiff was subjected to an elevated risk and was thus entitled to the protection of Labor Law §240(1). Specifically, the Court held that there was a differential between the level of plaintiff's work and a lower level, the level being the bottom of the creek. *Dooley v. Peerless Importers, Inc.*, - AD3d - (2nd Dept., 2007)

Labor Law §240: Verizon employee's fall into overgrown drainage ditch not covered by Labor Law §240: Plaintiff was working on a telephone pole using an aerial bucket. He then lowered the bucket in which he was working down to where to appeared to him that he was approximately 6 to 12 inches from the ground. He determined this by observing grass entering the bucket through the metal grate floor. He then stepped out of the bucket and fell head first into a drainage ditch that was overgrown with grass and weeds. The Court held that the aerial bucket was effective in preventing plaintiff from falling while he was working on the telephone wire. Thus, the core objective of Labor Law §240 was met. Plaintiff's fall into the ditch was not covered by §240 because it resulted from the usual and ordinary dangers at a work site and no true elevation risk was involved. *Caleta v. New York State Electric and Gas Corporation*, - AD3d - (4th Dept., 2007).

Labor Law §240: Barn owner not liable under Labor Law §240: Plaintiff fell from a ladder while installing horse stalls in a barn like building. Defendant owner used the barn to store her own property and to shelter horses owned by her daughter. The Court concluded that the exemption from liability for owners of one and two family dwellings applied to the defendant and thus she was entitled to summary judgment dismissing the Labor Law 240 cause of action. As the barn was on defendant's property and used in part for personal storage unit purposes, it was akin to a garage and should be considered an extension of this dwelling within the scope of the home owner exemption. *Lista v. Newton*, - AD3d - (4th Dept., 2007).

Labor Law §240: Conflicting testimony re: cause of accident precludes summary judgment on Labor Law §240: Plaintiff claimed that while descending a 16 foot extension ladder which was only tied on one side, it wobbled, causing him to fall 10 feet and be injured. Defendants submitted deposition testimony that ladder was tied on both sides and that plaintiff and plaintiff's foreman both stated that hat plaintiff fell from the ladder while descending because he missed a rung. Moreover, the accident report signed by plaintiff states that the accident occurred when plaintiff missed a rung and fell off. Defendants also submitted an affidavit from plaintiff's foreman that plaintiff fell because he missed a rung on the ladder. The conflict between plaintiff's deposition testimony and the

defendant's submissions precluded the Court from determining as a matter of law whether defendants were liable under Labor Law §240 for providing plaintiff with a defective or malfunctioning ladder or, alternatively, whether plaintiff's conduct was the sole proximate cause of the fall. *Antenucci v. Three Dogs, LLC*, - AD3d - (1st Dept., 2007).

Labor Law §240: Applies when the injuries caused by an effort to prevent an object from falling: Plaintiff was working on the 7th floor of a building. The needed materials were supplied in a bucket on a pulley system which lacked brake system. At the time of the accident a bucket was overloaded with 200 pounds of bolts, etc. when it became stuck under the floor. Plaintiff pulled on the line in an attempt to dislodge the bucket, but a co-worker, believing plaintiff had unloaded the bucket, let go of the line. Concerned for the safety of the fellow worker, plaintiff grabbed the bucket with his other hand to prevent it from falling, which caused him to fall off the beam 6 or 8 feet, until his safety line abruptly halted his descent. The Court held that the proximate cause of plaintiff's injuries was the lack of a brake mechanism on the pulley system which was a failure to provide proper protection against elevated risks. The Court held that Labor Law §240 applied since the safety devices proved inadequate to shield plaintiff from gravity related injuries. Defendants argued that liability in cases involving hoists can only be imposed when the object falls on the worker. The Court held that this reliance is misplaced. It is sufficient to demonstrate that an injury was caused by an effort to prevent an object from falling. *Lopez v. Boston Properties, Inc.*, - AD3d - (1st Dept., 2007).

Labor Law §240: Fall from permanent stairway not a Labor Law §240 claim. Plaintiff was a construction worker engaged in finish work on the construction of a modular home. He attempted to climb a set of permanent stairs which collapsed, causing him to fall 18 feet through a hole in the first floor to the concrete floor of the basement. Plaintiff argued that he was using the stairway to access the second floor and thus, it was the functional equivalent of a ladder within the meaning of that statute. The Court held that such a structure functions as a permanent passageway between two parts of a building, not as a tool or device that is employed for the expressed purposes of gaining access to an elevated work site. Thus, the claim was properly dismissed. *Milanes v. Kellerman*, - AD3d - (3rd Dept., 2007).

Labor Law §240: Application When plaintiff hit with load of cinder blocks: Plaintiff was struck with a load of cinder blocks that became loose and fell on him. The load was being hoisted from a flat bed truck and lowered onto a pallet near where he was standing. The Court held that the elevation risk fell within the parameters of Labor Law §240 and warranted summary judgment. *Gonzalez v. Glenwood Mason Supply*, - AD3d - (1st Dept., June 28, 2007).

Labor Law §240: Landlord/owner not liable under §240 for work done in contravention of lease and without his permission: Defendant landlord leased commercial property to the tenant pursuant to written agreement preventing tenant from making any structural alterations to the interior or exterior without written consent and providing that all plans for work are subject to landlord's prior approval. Without obtaining landlord's approval or even notifying landlord, the tenant hired plaintiff to make repairs and changes to the premises. Tenant supplied plaintiff with an extension ladder to reach the top of a wall. Plaintiff leaned ladder against the wall and as he descended, it slipped and he fell to the floor. The Court held that because the work was performed without the landlord's knowledge and in violation of the lease requirement regarding prior consent, the landlord cannot be held liable under Labor Law §240. The Court noted that the landlord cannot be charged with the duty of providing the safe work conditions contemplated under Labor Law §240 when he/she has no knowledge that any work is being conducted. *Moralis v. D&A Food Service*, - AD3d - (1st Dept., 2007).

Labor Law §200, §240 and §241(6): Question of fact regarding whether single family property owner/previous employer of plaintiff controlled renovation: The defendant owned a construction which had employed plaintiff before the accident on an unrelated job. The Court held that there was a question of fact as to whether this owner exercised the requisite degree of direction and control over the renovation of his home in order to impose liability under Labor Law §240 and §241(6). As there is such a question regarding direction and control, there is also a question of fact as to whether this owner is liable under Labor Law §200 or common law negligence. *Boccio v. Bozik*, - AD3d - (2nd Dept., J2007).

Labor Law §240 and §241(6): Owner of construction company not liable under Labor Law §240 or §241(6) regarding construction of his house, but his company is: Defendant, the owner of a single family house, is also the owner of the defendant Waterford Custom Homes which buys and develops real estate for single family homes. Plaintiff sued both entities. Court held that the owner did not direct or control the plaintiff's work and thus is not liable to the plaintiff under Labor Law §240 and §241(6). However, there is an issue as to whether his company was the general contractor. Record established that this company built 35 homes in the subdivision and was listed as the general contractor on the blueprints, invoice and building permit application. Also, Waterford was billed by at least 29 vendors. While the mere status of general contractor does not indicate liability, this record raised a question of fact as to whether or not Waterford was a general contractor. *Burnett v. Waterford Custom Homes*, -AD3d - (4th Dept., 2007).

Labor Law §240 and §241(6): Issue of fact regarding whether construction manager liable under Labor Law: Plaintiff was injured when piping that he was installing hit the ladder on which he was standing, causing him to fall. Defendant was construction manager (CM) for the project. Court held that CM failed to establish his burden that it did not serve as a general contractor or agent of the owner. Pursuant to the agreement with the owner, CM was responsible for overseeing the site. Moreover, CM had full time employees on site and conducted bi-weekly progress meetings. There was also deposition testimony indicating that CM had the authority to supervise the contractors' activities and to stop unsafe work practices. Thus, the Court held that CM's own submissions raised a triable issue of fact as to whether it had the ability to control the activity that brought about the injury and thus is liable as a general contractor or an agent of the owner of the property. *Sheridan v. Albion Central School District*: - NY3d - (4th Dept., 2007).-----

-----KSLN Partner, Thomas J. Cannavo also recently authored an article discussing Recent Developments in New York Labor Law .