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## Tom Cannavo Authors Article on Labor Law

Read about Recent Developments in the New York Labor Law in an article by KSLN partner Thomas J. Cannavo.

Recent Developments in New York Labor Law, 2007

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Times are changing. New York Courts are slowly recognizing the effect of holding property owners and contractors responsible for damages to workers injured on the job through the worker's own negligence. The courts are forcing workers (plaintiffs) to be responsible for their own actions, just as the rest of the world is. In prior cases, courts have interpreted Labor Law §240(1) to impose strict or absolute liability on the contractor and owner of a property for injuries to workers. Liability was imposed whether or not they actually supervised or controlled the plaintiff's work. Prior interpretations generally did not examine whether plaintiff acted in a safe manner. Plaintiffs were routinely granted summary judgment and the case would proceed on the issue of damages only. Recently, courts are more willing to find questions of fact as to when plaintiff's own negligence was the sole proximate cause of the accident.<sup>[i]</sup> The trend has been to examine the conduct of the plaintiff just as closely as the conduct of the property owners and contractors. The increasingly popular "recalcitrant worker" defense has become more viable in Labor Law cases as courts are willing to find that plaintiff's own negligence is an issue. A property owner or contractor who provides the necessary safety devices is not necessarily liable to a plaintiff who chooses not to use them. In fact, the owner or contractor does not even have to insist upon the plaintiff's use of such devices. The obligation is to make the safety devices available to the plaintiff and instruct him on how to use them. The rest is up to the plaintiff. When a reasonable jury could find a plaintiff's decision resulted in his or her injuries, summary judgment will not be granted in favor of the plaintiff.<sup>[ii]</sup> In *Chimborazo v. WCL Asciates, Inc.*, plaintiff fell from a shelving unit that he was using as a scaffold. There was some evidence that plaintiff either failed to use available safety devices or otherwise failed to follow instruction. The Appellate Court found that summary judgment could not be granted for the plaintiff because there were genuine issues of fact as to whether plaintiff was injured because of his own conduct, rather than a failure to provide safety equipment.<sup>[iii]</sup> The case will proceed to trial with a jury, not a judge, deciding whether plaintiff caused his own injuries. In *Cahill v. Triborough Bridge And Tunnel Authority*, the issue was whether or not plaintiff knew about the safety devices he was given and chose not to use them. Plaintiff was injured while repairing parts of the Triborough Bridge. He was instructed by the bridge owner on how to use a safety line to hold himself in place while he worked. Plaintiff chose not to use the safety line, even though the bridge owner provided one to him. The Court of Appeals reversed the lower court's granting of summary judgment for the plaintiff, finding plaintiff's decision to not use the safety line was the sole proximate cause for his injury. Once a worker is given the proper tools and knowledge to safely complete the job, he is expected to use it.<sup>[iv]</sup> This logic of *Cahill* has been affirmed and expanded in recent years. In 2007, the courts have continued to hold the plaintiff responsible for his or her actions. In *Gonzalez v. Rodless Properties, L.P.*, plaintiff was given two scaffolds, a ladder, ropes and a safety harness to use on the jobsite. Plaintiff chose not to use the safety devices and was injured. The trial court denied plaintiff's motion for summary judgment, which was affirmed by the Appellate Division.<sup>[v]</sup> In *Rukaj v. Eastview Holdings, LLC*, plaintiff was injured when he fell off a ladder while performing preventive maintenance of air conditioning equipment in a building. Plaintiff decided to use one hand to climb up the ladder and the other hand to carry a power washer when he fell. Although the Labor Law does not apply to routine maintenance, the Appellate Division addressed the issue in dicta, stating that plaintiff's own actions were the sole proximate cause of his injuries.<sup>[vi]</sup> Not only are workers being held accountable to work in a safe manner, but they are also being held responsible to follow their supervisor's instructions to prevent being injured. In *Cogan v. McCloskey Community Service Corporation*, plaintiff claimed that his supervisor's instructions were unclear as to the job he was supposed to perform. Plaintiff attempted to paint an entranceway located approximately 20 feet above ground with only a 12-foot ladder and no additional safety devices. Plaintiff's supervisor stated that he only instructed plaintiff to paint the trim of the first-floor windows. The windows were only five feet tall and did not require the use of a ladder to be painted safely. Plaintiff's supervisor claimed that he made the instructions to plaintiff "abundantly clear" that plaintiff was not to paint the entranceway.<sup>[vii]</sup> In *Leniar v. Metropolitan Transit Authority*, plaintiff fell from a scissor lift when he was painting a section of a bridge. Plaintiff intentionally unhooked his harness and climbed onto the railing of the scissor lift against defendant's (bridge owner) instructions. Prior to going to this job site, plaintiff attended several safety meetings given by the defendant. Plaintiff clearly knew he was required to use the harness but chose not to. The Appellate Court held that plaintiff himself was responsible for his decision to unhook the safety harness and reversed the lower court's denial of defendant's summary judgment motion.<sup>[viii]</sup> In the past, the court would have granted plaintiff's summary judgment simply because plaintiff had fallen. No examination would have been conducted as to why plaintiff had fallen. The fact that a fall occurred at all would have been sufficient to grant summary judgment for the plaintiff. However, the Appellate Division in *Cogan* denied both the defendant's and the plaintiff's motions for summary judgment.<sup>[ix]</sup> Even in light of the recent case law, the Labor Law will still hold premises owners and contractors accountable for unsafe work environments.<sup>[x]</sup> Absent a showing that a plaintiff deliberately refused to use available and adequate safety devices in the proper fashion, the premises owner and contractor will be liable for plaintiff's injuries. In *Bell v. Bengomo Realty, Inc.*, plaintiff was installing conduit lines when he fell into an open trench. The worker had to stand on a portion of asphalt that protruded over the edge in order to obtain the measurements from a coworker below. The Appellate Division found the premises owner and tenant liable because the work environment was unsafe, and reversed the lower court's decision to grant summary judgment for the owner and tenant.<sup>[xi]</sup>

Likewise in *Rios v. WVF-Paramount*, the defendant was responsible for plaintiff's injuries because defendant failed to provide a safe work environment. Plaintiff was standing on a ladder to repair and replace electrical wiring in the ceiling to restore the light on the entire floor. The court examined both the defendant's and plaintiff's conduct. The analysis uncovered that the defendant failed to give plaintiff the proper ladder to install the light bulbs.[xii] Plaintiff's summary judgment motion was granted the lower court and affirmed by the Appellate Division. In *Miraglia v. H&L Holding Corp.*, the contractor did not provide a safe number of planks over a trench for a worker to walk on. The plaintiff therefore fell into the trench and was impaled by a steel bar.[xiii] After examining the acts of the defendant as well as the plaintiff, the court determined as a matter of law that the plaintiff was not the sole proximate cause of his injuries and is therefore not at fault. Plaintiff was eventually awarded damages.[xiv] In a case where it is unclear as to whether the defendant failed to provide the proper safety devices or whether the plaintiff chose not to use them, the court will not grant summary judgment for either side. Instead these issues will be left for a jury to decide at trial. In *Durkin v. Long Island Power Authority*, plaintiff ultimately died when he fell from a ladder. There was evidence the ladder had shifted. However, the facts were not clear as to when the ladder shifted &ndash; either before plaintiff's fall or after. Therefore, the court denied plaintiff's motion for judgment as a matter of law.[xv] With courts taking a harder look at the recalcitrant worker and utilizing the sole proximate cause theory, the responsibility for workplace injuries is slowly becoming more balanced. Property owners and contractors that provide safety devices with the proper instruction are having increasing success in defending actions brought under the Labor Law. The tide is slowly turning.

[i] *Chimborazo v. WCL Associates, Inc.* 37 A.D.3d 394, 829 N.Y.S.2d 635 (2nd Dept. 2007). [ii] *Cahill v. Triborough Bridge and Tunnel Authority*, 4 N.Y.3d 35, 790 N.Y.S.2d 74 (2004). [iii] *Chimborazo*, 37 A.D.3d at 394. [iv] *Cahill*, 4 N.Y.3d. at 38. [v] *Gonzalez v. Rodless Properties, L.P.*, 37 A.D.3d 180, 829 N.Y.S.2d 77 (1st Dept. 2007). [vi] *Rukaj v. Eastview Holdings, LLC*, 36 A.D.3d 519, 828 N.Y.S.2d 358 (1st Dept. 2007). [vii] *Cogan v. McCloskey Community Service Corporation*, 37 A.D.3d 926, 829 N.Y.S.2d (3rd Dept. 2007). [viii] *Leniar v. Metropolitan Transit Authority*, 37 A.D.3d 425, 829 N.Y.S.2d 619 (2nd Dept. 2007). [ix] *Cogan*, 37 A.D.3d at 926. [x] *Miraglia v. H & L. Holding Corp.*, 36 A.D.3d 456, 828 N.Y.S.2d 329 (1st Dept. 2007). [xi] *Bell v. Bengomo Realty, Inc.*, 36 A.D.3d 479, 829 N.Y.S.2d 42 (1st Dept. 2007). [xii] *Rios v. WVF-Paramount 545 Property, LLP*, 36 A.D.3d 511, 828 N.Y.S.2d 368 (1st Dept. 2007). [xiii] *Miraglia*, 36 A.D.3d at 456. [xiv] *Id.* [xv] *Durkin v. Long Island Power Authority*, 37 A.D.3d 400, 830 N.Y.S.2d 242 (2nd Dept. 2007).