

NEW YORK COURT OF APPEALS

Waldemar Biaca-Neto, et al. v. Boston Road II Housing Development Fund Corporation, et al.

SSM No. 30 · No. SSM No. 30 · Decided February 18, 2020

SUMMARY

The New York Court of Appeals modified the Appellate Division's order to deny defendants summary judgment on the Labor Law § 240(1) claim and the related loss-of-consortium claim. The Court held that a triable issue existed as to whether the plaintiff knew he was expected to use available safety devices, given evidence that workers commonly entered the building through scaffold window cut-outs. The Court left undisturbed the dismissal of the common-law negligence and Labor Law §§ 200 and 241(6) claims.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Judge Rivera; Judge Fahey; Judge Wilson; Judge Feinman; Judge Garcia; Chief Judge DiFiore; Judge Stein
JURISDICTION	New York
DECIDED	February 18, 2020
DOCKET	SSM No. 30
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed an Appellate Division order granting defendants summary judgment dismissing the Labor Law § 240 (1), loss of consortium, common-law negligence, and Labor Law §§ 200 and 241 (6) causes of action.
STANDARD OF REVIEW	Summary judgment is proper only where no triable issue of fact exists and the movant is entitled to judgment as a matter of law. Under Labor Law § 240 (1), summary judgment for a defendant based on the sole-proximate-cause defense requires proof that adequate safety devices were available, the plaintiff knew they were available and expected to use them, chose without good reason not to use them, and would not have been injured had the plaintiff used them.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum; majority disposition is precedential to the extent recognized under New York

law.

PARTIES

Waldemar Biaca-Neto, et al. v. Boston Road II Housing Development Fund Corporation, et al., Mountco Construction and Development Corp.

TOPICS

construction law personal injury negligence loss of consortium damages

PRACTICE AREAS

construction law personal injury torts remedies

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment on the Labor Law § 240 (1) claim under the sole-proximate-cause defense where the record raised a factual issue regarding whether plaintiff knew he was expected to use the available safety devices.
2. Whether the derivative loss of consortium claim based on Labor Law § 240 (1) was also improperly dismissed.
3. Whether the common-law negligence and Labor Law §§ 200 and 241 (6) claims should be reinstated.

HOLDINGS

1. Defendants were not entitled to summary judgment because a triable issue of fact existed as to whether plaintiff knew he was expected to use the available safety devices.
2. The portion of the derivative loss of consortium claim based on Labor Law § 240 (1) was also improperly dismissed and had to be reinstated.
3. The Court declined to reinstate the causes of action sounding in common-law negligence and Labor Law §§ 200 and 241 (6).

KEY QUOTATIONS

“A defendant has no liability under Labor Law § 240 (1) when plaintiffs: (1) “had adequate safety devices available,” (2) “knew both that” the safety devices “were available and that [they were] expected to use them,” (3) “chose for no good reason not to do so,” and (4) would not have been injured had they “not made that choice”” (SSM No. 30, at 2)

“Accordingly, the Labor Law § 240 (1) cause of action was improperly dismissed because a triable issue of fact exists as to whether plaintiff’s conduct was the sole proximate cause of his injuries.” (SSM No. 30, at 3)

FACTUAL BACKGROUND

On his third day at the job site, plaintiff watched a coworker climb from a scaffold platform to a beam approximately seven feet above the platform, unhook a safety belt, and enter the building through a window cut-

out. Plaintiff attempted the same maneuver and was injured when he slipped and fell to the scaffold platform. Although the general contractor had a standing order prohibiting entry through window cut-outs, the record contained no evidence that plaintiff had been informed of the order, and coworkers provided sworn statements that workers used the scaffolding to enter the building through window openings at different floor levels.

PROCEDURAL HISTORY

Plaintiff was injured after attempting to move from exterior scaffolding into a building through a window cut-out. The Appellate Division affirmed dismissal of the relevant claims, with a dissent. The New York Court of Appeals reviewed the matter on submissions under section 500.11 and modified the order by denying defendants summary judgment on the Labor Law § 240 (1) claim and the derivative loss of consortium claim insofar as based on that statute, while affirming the order in all other respects.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The order was modified by denying defendants' motion for summary judgment on the Labor Law § 240 (1) cause of action and the derivative loss of consortium cause of action insofar as based on Labor Law § 240 (1); as modified, the order was affirmed.

CASES CITED

- Cahill v Triborough Bridge & Tunnel Auth., 4 NY3d 35, 39-40 [2004]
- Gallagher v New York Post, 14 NY3d 83, 88 [2010]
- Montgomery v Federal Express Corp., 4 NY3d 805, 806 [2005]
- Robinson v East Med. Ctr., LP, 6 NY3d 550, 554-555 [2006]
- Blake v Neighborhood Housing Services of New York City, 1 NY3d 280, 286 [2003]