

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Panfilow v. 66 E. 83rd St. Owners Corp.

2023 NY Slip Op 03357 (App. Div. 2023) · No. 2020-06026 · Decided June 21, 2023

SUMMARY

The Appellate Division, Second Department, reversed an order denying the plaintiff's motion for summary judgment under Labor Law § 240(1) and the defendants' cross-motion concerning Labor Law § 200 and common-law negligence. The court found good cause for the plaintiff's delayed motion due to outstanding discovery and granted summary judgment to the plaintiff on the Labor Law § 240(1) claim. It also granted the defendants summary judgment dismissing the Labor Law § 200 and common-law negligence claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; Reinaldo E. Rivera, J.; Lara J. Genovesi, J.; Janice A. Taylor, J.
JURISDICTION	New York
DECIDED	June 21, 2023
DOCKET	2020-06026
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed, and defendants cross-appealed, from an order denying as untimely plaintiff's motion for summary judgment on liability under Labor Law § 240(1) and defendants' cross-motion for summary judgment dismissing the Labor Law § 200 and common-law negligence claims.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. The Appellate Division also reviewed whether good cause existed for the delay in making the summary-judgment motion under CPLR 3212(a) and the Kings County Supreme Court Uniform Civil Term Rules.
PRECEDENTIAL VALUE	published New York Appellate Division opinion

PARTIES

Pawel Panfilow v. 66 East 83rd Street Owners Corp., Janbar, Inc.,
other defendants

TOPICS

construction law personal injury summary judgment negligence appellate procedure

PRACTICE AREAS

construction law personal injury torts civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiff established good cause for moving for summary judgment more than 60 days after filing the note of issue.
2. Whether plaintiff was entitled to summary judgment on liability under Labor Law § 240(1) based on defendants' failure to provide a safe and adequate ladder for elevation-related work.
3. Whether defendants were entitled to summary judgment dismissing the Labor Law § 200 and common-law negligence claims because they did not create or have notice of the dangerous condition and lacked authority to supervise or control the means and methods of plaintiff's work.
4. Whether the Appellate Division should reach the merits rather than remit the matter to the Supreme Court.

HOLDINGS

1. Plaintiff demonstrated good cause for moving for summary judgment after the 60-day deadline because the trial court required filing of the note of issue while significant discovery remained outstanding and the parties thereafter substantially complied with the court-ordered discovery schedule.
2. Plaintiff was entitled to summary judgment on liability under Labor Law § 240(1) because defendants failed to satisfy their nondelegable duty to provide a safe and adequate ladder for plaintiff's elevation-related work, and that failure proximately caused his injuries.
3. Defendants were entitled to summary judgment dismissing the Labor Law § 200 and common-law negligence claims because they demonstrated that they neither created nor had actual or constructive notice of the condition alleged to have caused the accident and lacked authority to supervise or control the means and methods of plaintiff's work.

KEY QUOTATIONS

*"Good cause in this context "requires a showing of good cause for the delay in making the motion"" (*1)*

*"Labor Law § 240(1) imposes a nondelegable duty upon owners and contractors to provide or cause to be furnished certain safety devices for workers at an elevated work site, and the absence of appropriate safety devices constitutes a violation of the statute as a matter of law"" (*1)*

"Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*2)

FACTUAL BACKGROUND

The plaintiff was working at a construction site owned and operated by the defendants when he fell from a ladder and sustained personal injuries. He alleged that the defendants violated Labor Law §§ 200, 240(1), and 241(6), as well as common-law negligence. The record showed that substantial discovery remained outstanding when the trial court required plaintiff to file a note of issue, and the deposition of a representative of Janbar was not completed until June 2019.

PROCEDURAL HISTORY

Panfilow commenced a personal-injury action in September 2017 after falling from a ladder at a construction site. The Supreme Court, Kings County, directed plaintiff to file a note of issue even though substantial discovery remained outstanding, and later denied both the plaintiff's summary-judgment motion and defendants' cross-motion as untimely. The Appellate Division reversed, reached the merits in the interest of judicial economy, granted plaintiff summary judgment on Labor Law § 240(1), and granted defendants summary judgment dismissing the Labor Law § 200 and common-law negligence claims.

DISPOSITION

reversed

CASES CITED

- Lyebiedyev v. Hoffman, 84 A.D.3d 751, 752
- Brill v. City of New York, 2 N.Y.3d 648, 652
- Miceli v. State Farm Mut. Auto. Ins. Co., 3 N.Y.3d 725, 726-727
- Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 129
- Munoz v. Agenus, Inc., 207 A.D.3d 643, 644
- Alvarez v. Eviles, 56 A.D.3d 500, 500
- Smith v. Nameth, 25 A.D.3d 599, 600
- Nisimova v. Starbucks Corp., 108 A.D.3d 513, 514
- Treu v. Cappelletti, 71 A.D.3d 994, 997
- Sozzi v. Gramercy Realty Co. No. 2, 304 A.D.2d 555, 556
- Beckford v. 40th St. Assoc. [NY Partnership], 287 A.D.2d 586, 587
- Carreras v. Weinreb, 33 A.D.3d 953, 954
- Saitta v. Marsah Props., LLC, 211 A.D.3d 1062, 1063-1064
- Rodriguez v. Metropolitan Transp. Auth., 191 A.D.3d 1026, 1027-1028
- Cantalupo v. Arco Plumbing & Heating, Inc., 194 A.D.3d 686, 689

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