

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

Fuczynski v. 144 Div., LLC

2022 NY Slip Op 05151 (App. Div. 2022) · No. 2020-07287 · Decided September 14, 2022

SUMMARY

The Appellate Division, Second Department, reversed an order denying the plaintiff leave to file a late motion for summary judgment in a construction-related personal injury action. The court held that post-deposition discovery concerning a possible unauthorized-work defense was essential to the motion and constituted good cause for the delay, remanding for a determination of the summary judgment issues on the Labor Law §§ 240(1) and 241(6) claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Joseph J. Maltese, J.; Lara J. Genovesi, J.; William G. Ford, J.
JURISDICTION	New York
DECIDED	September 14, 2022
DOCKET	2020-07287
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed from an order denying leave to serve and file a late motion for summary judgment and, consequently, denying without reaching the merits his motion for summary judgment on liability under Labor Law §§ 240(1) and 241(6).
STANDARD OF REVIEW	The Appellate Division reviewed the denial of leave to file a late summary-judgment motion for an improvident exercise of discretion and reviewed the governing legal standard under CPLR 3212(a).
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Antoni Fuczynski v. 144 Division, LLC

TOPICS

- summary judgment
- construction law
- personal injury
- appellate procedure
- civil procedure

PRACTICE AREAS

civil procedure

construction law

personal injury

appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff established good cause under CPLR 3212(a) for leave to serve and file a late motion for summary judgment.
2. Whether post-deposition discovery concerning a possible unauthorized-work defense was essential to the plaintiff's proposed summary-judgment motion and therefore supported good cause for the late filing.

HOLDINGS

1. The Supreme Court improvidently exercised its discretion in denying leave to serve and file the late motion. The plaintiff established good cause because the post-deposition discovery he sought was essential to the proposed motion and related to a possible defense to his Labor Law claims.

KEY QUOTATIONS

*“Under the circumstances of this case, the Supreme Court improvidently exercised its discretion in denying that branch of the plaintiff's motion which was for leave to serve and file a late motion for summary judgment.” (*2)*

*“The discovery sought by the plaintiff related to Gamble's testimony indicating that the plaintiff may have been engaged in unauthorized work at the time of the accident, which may be a defense to the Labor Law causes of action” (*2)*

FACTUAL BACKGROUND

The plaintiff, a carpenter and laborer, was working on a commercial renovation project owned by 144 Division, LLC. He testified that on March 7, 2016, he suffered an electric shock while disconnecting a ceiling lighting fixture and fell from a six-foot Baker scaffold lacking guardrails. Discovery continued after the note of issue was filed, including depositions and post-deposition demands concerning testimony that the plaintiff may have been performing unauthorized work when he was injured.

PROCEDURAL HISTORY

Fuczynski commenced a personal-injury action against 144 Division, LLC and another party. After a note of issue was filed before discovery was complete, the plaintiff and the defendant conducted depositions and engaged in post-deposition discovery. The plaintiff moved for leave to file a late summary-judgment motion and for summary judgment on liability. The Supreme Court, Kings County, denied the motion based on the approximately five-month delay after the defendant's witness was deposed. The Appellate Division reversed and remitted for a determination of the summary-judgment branches on the merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Grant the branch of the plaintiff's motion seeking leave to serve and file a late motion for summary judgment, and determine on the merits the branches seeking summary judgment on liability on the Labor Law §§ 240(1) and 241(6) causes of action.

CASES CITED

- Brill v City of New York, 2 NY3d 648, 652
- Navarro v Damac Realty, LLC, 202 AD3d 1100, 1101
- Johnson v Peconic Diner, 31 AD3d 387, 388
- McNally v Beva Cab Corp., 45 AD3d 820, 821
- Espejo v Hiro Real Estate Co., 19 AD3d 360, 361
- Vega v Renaissance 632 Broadway, LLC, 103 AD3d 883, 885
- Garcia v Bleeker St. Gardens, LLC, 188 AD3d 830, 831
- Mondesir v Sterling, 149 AD3d 1067, 1068
- He Ping Shao v Cao Zhao Wei, 118 AD3d 943, 944
- Tafsiou v Arms Acres, 95 AD3d 995, 996
- Kitkas v Windsor Place Corp., 49 AD3d 607, 608