

COURT OF APPEALS OF THE STATE OF NEW YORK

Nagel v. D & R Realty Corp.

99 N.Y.2d 98, 782 N.E.2d 558, 752 N.Y.S.2d 581 (2002) · Decided November 14, 2002

SUMMARY

The New York Court of Appeals held that Labor Law § 241 (6) does not apply to injuries arising from building maintenance work performed outside the context of construction, demolition, or excavation. Because the plaintiff was injured while conducting a routine two-year elevator safety inspection, his claim based on an Industrial Code slipping-hazard provision was not covered by the statute.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Smith, J.; Chief Judge Kaye; Judge Levine; Judge Ciparick; Judge Wesley; Judge Rosenblatt; Judge Graffeo
JURISDICTION	New York
DECIDED	November 14, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting the property owner's motion for summary judgment and dismissing their Labor Law claims. The Appellate Division affirmed, and the Court of Appeals granted leave and affirmed.
STANDARD OF REVIEW	De novo review of the summary judgment dismissal and the interpretation and applicability of Labor Law § 241 (6).
PRECEDENTIAL VALUE	Binding precedent of the New York Court of Appeals
PARTIES	Bruce Nagel, Nagel's wife v. D & R Realty Corp.

TOPICS

- construction law
- statutory interpretation
- legislative history
- negligence

PRACTICE AREAS

- construction law
- statutory interpretation
- torts

QUESTIONS PRESENTED

1. Whether an employee injured while performing a two-year elevator safety inspection may recover under Labor Law § 241 (6).
2. Whether the Industrial Code definition of construction work, which includes maintenance, extends Labor Law § 241 (6) to maintenance work unrelated to construction, demolition, or excavation.

HOLDINGS

1. Labor Law § 241 (6) does not apply to claims arising from building or structure maintenance performed outside the construction, demolition, or excavation context.
2. The Industrial Code's inclusion of maintenance within the definition of construction work must be construed consistently with Labor Law § 241 (6)'s limitation to the construction, demolition, and excavation context; it does not extend the statute to unrelated routine maintenance.

KEY QUOTATIONS

“Because the protections of Labor Law § 241 (6) do not apply to claims arising out of maintenance of a building or structure outside of the construction context, such claims must fail.” (99 N.Y.2d at 99)

“That the Legislature sought to protect workers from industrial accidents specifically in connection with construction, demolition or excavation work is, therefore, patent.” (99 N.Y.2d at 102)

FACTUAL BACKGROUND

Bruce Nagel was standing on top of an elevator while performing a required two-year safety inspection to ensure that the elevator's safety mechanisms or brakes operated properly. After approximately one and one-half hours of the two-hour inspection, he slipped on oil and injured his right shoulder. The work was routine maintenance and was not connected to construction, demolition, or excavation of the building or structure.

PROCEDURAL HISTORY

Bruce Nagel and his wife sued D & R Realty Corp. after Nagel was injured while performing a two-year elevator safety inspection, alleging violations of Labor Law §§ 200, 240 (1), and 241 (6), including Industrial Code § 23-1.7 (d). Plaintiffs withdrew the §§ 200 and 240 (1) claims. Supreme Court granted summary judgment to D & R, the Appellate Division affirmed, and the Court of Appeals affirmed on the ground that the work was outside Labor Law § 241 (6)'s construction, demolition, or excavation context.

DISPOSITION

affirmed

CASES CITED

- Allen v. Cloutier Constr. Corp., 44 N.Y.2d 290 (1978)
- Iuliani v. Great Neck Sewer Dist., 38 N.Y.2d 885 (1976)
- Rusin v. Jackson Hts. Shopping Ctr., 27 N.Y.2d 103 (1970)
- Joblon v. Solow, 91 N.Y.2d 457 (1998)

- Page v. State of New York, 56 N.Y.2d 604 (1982)
- Mosher v. State of New York, 80 N.Y.2d 286 (1992)

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