

WILLIS CONSTRUCTION PRACTICE CLAIMS & LITIGATION ALERT

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Even though the ladder was not defective, plaintiff is entitled to summary judgment on his Labor Law Section 240 Cause of Action.

Madtes v. Bovis Lend Lease LMB, Inc., 239 NYLJ 57, February 26, 2008 (Supreme Court, New York County).

FACTS

Bovis, the construction manager, was performing renovation work at the Federal Post Office in Cadman Plaza, Brooklyn. The plaintiff was a steamfitter foreman employed by Active Fire Sprinkler, the sprinkler installation subcontractor.

On Saturday, May 7, 2005, the plaintiff and his crew were re-installing pipes in the ceiling that had initially been installed a month earlier. The re-installation was necessary due to either an architectural change or improper initial installation.

At the first installation, the plaintiff and his crew had used scissor lifts to install the pipes. On this occasion, the plaintiff was advised by the Bovis project manager that the lifts would not be available, because the elevators apparently did not operate on Saturdays.

Since scissor lifts could not be used, the crew had to use ladders. The plaintiff testified that his crew could not use 14-foot ladders, because they were too long to get around the bend in the stairs. The plaintiff was told to use the ladders that were already available on the floor (two 10-foot ladders and one 12-foot ladder).

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The plaintiff was on the seventh rung of a 10-foot ladder, attempting to dislodge a ceiling pipe, when the ladder began to shake and lean to the right. He was unable to stabilize the ladder and it toppled over, causing plaintiff to fall to the ground, sustaining the injuries for which he sued.

ISSUE

After discovery, the plaintiff filed a motion for summary judgment on his Labor Law Sec. 240 cause of action. The court granted the plaintiff's motion.

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DECISION

While recognizing the well settled law that “proof of a fall from a ladder does not, by itself, establish liability under Sec. 240 [*Miro v. Plaza Construction Corp.*, 38 A.D.3d 454 (1st Dept. 2007)],” the court nevertheless granted summary judgment to the plaintiff because “here the evidence indicates that Plaintiff did not get the equipment he needed to properly perform the task at hand, even though the ladder...was not itself defective.”

The court rejected Bovis’s efforts to assert the “sole proximate cause” defense. In doing so, the court noted:

- There was no evidence submitted that the elevators were working on that Saturday
- Even if they were working, there was no evidence submitted that the plaintiff refused to use them to bring the scissor lifts to the eighth floor
- There was no evidence submitted that the plaintiff could have gotten the 14-foot ladders up the stairs if he chose to do so
- It was also undisputed that the work had to be performed on a Saturday, when construction work was not normally done

The court also specifically rejected Bovis’s argument that it was under the impression that the choice of appropriate equipment was within the plaintiff’s discretion.

“That position is unsupported by law, and turns on its head the purpose of Sec. 240, which is to protect workers by placing the ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor, instead of on the workers, who are scarcely in a position to protect themselves from accidents.”

COMMENT

Not a surprising result considering that scissor lifts were used to initially install the sprinkler pipes and that the elevators could probably have been made available without too much difficulty.