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## Labor Law §240(1) Claim Dismissed

In *Grove v. Cornell University*, the Second Department recently affirmed the Supreme Court for Tompkins County's decision to grant defendant's cross-motion for summary judgment dismissing plaintiff's Labor Law §240 claim. The Appellate Court affirmed the dismissal finding that plaintiff's failure to attach his lanyard to his lift basket was the sole proximate cause of the injury. In addition, the Court found that the defendants were not liable for failing to afford an additional, redundant safety device to the plaintiff.

Defendant Cornell University had hired defendant Skanska USA Building, Inc. as the general contractor to construct a building on its campus. Skanska subcontracted the window glazing work to plaintiff's employer. Plaintiff and a co-worker were installing weather stripping and metal flashing on the second story windows of the new building. Plaintiff and his co-worker utilized a mechanical telescoping boom lift to reach the second story windows. Attached to the boom lift was a metal basket in which plaintiff, his co-worker and their tools and materials were situated. Three of the four sides of the basket were enclosed by permanent metal rails. The fourth side was enclosed by a metal gate designed with a spring-loaded hinge that would cause the gate to swing closed automatically. Plaintiff and his co-worker were also provided with safety harnesses and lanyards to be attached to the basket to prevent them from falling out when the basket was raised.

After a break and a trip to retrieve additional materials, plaintiff and his co-worker re-entered the lift basket and plaintiff raised the lift to the second story. Plaintiff's co-worker noticed that plaintiff had not attached the lanyard on his harness to the basket and reminded him to do so. Within moments of returning to his work, the co-worker turned around and saw that plaintiff was gone and the gate was in the open position. Plaintiff had fallen 30 feet and landed on a slab of concrete below suffering significant injuries.

Plaintiff commenced an action against the various defendants based upon negligence and Labor Law violations and moved for partial summary judgment on the issue of liability with regard to his Labor Law §240(1) claim. Defendants opposed the motion and cross-moved for summary judgment dismissing plaintiff's Labor Law §240(1) claim. The Supreme Court granted defendant's cross-motion and denied plaintiff's motion for partial summary judgment. Plaintiff subsequently appealed.

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To establish liability on a Labor Law §240(1) claim, plaintiffs must show that the statute was violated and that the violation was a proximate or contributing cause of his injuries.

The Second Department found that the record made it clear that plaintiff was wearing his safety harness and lanyard at the time of the accident, but that he had failed to secure the lanyard to the basket. Although it was also undisputed that a spring-loaded hinge on the basket was not working automatically, the Court found it significant that the gate was still manually operable and could have been closed and locked by hand. As such, the Appellate Court found that the evidence established that the gate and the lanyard were available, adequate and operable safety devices, and that if plaintiff had either attached his lanyard as required or closed and latched the gate manually, the provided safety devices would have prevented him from falling out of the basket.

The Second Department also determined that the fact that the spring-loaded hinge was not operating properly did not render the gate itself defective. Given the lack of evidence that the lanyard was defective or inadequate and the fact that the lanyard would have prevented plaintiff's fall if engaged, the Court determined that it was ultimately irrelevant whether the gate was functioning automatically finding that Defendant was not required to furnish an additional, redundant safety device.

Thus, having failed to establish a statutory violation in the first instance, the Second Department held that plaintiff's partial motion for summary judgment was properly denied. Moreover, determining that plaintiff's own negligent conduct was, as a matter of law, the sole proximate cause of his injuries, the Appellate Court held that the defendants were entitled to summary judgment dismissing plaintiff's Labor Law §240(1) claim. ■

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