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Construction

Case law builds in support of NYS Appeals Court “Absolute Liability”

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Summary

The New York Court of Appeals’ landmark *Rupert Blake v. Neighborhood Housing Services of New York City, Inc.*, 1 N.Y.3rd 280, 771 N.Y.S.2d 484 (2003) decision continues to be an item of judicial discussion. The court continues to build on its ruling with additional favorable case law, both last year and, most recently, with the April 2006 *Robinson* decision.

Section 240 of New York’s Labor Laws can result in the imposition of “absolute liability” on owners and contractors who fail to provide adequate safety devices for workers. “Absolute liability” means liability without fault if the statute is violated. Under this theory, an owner or contractor can be liable even if the owner or contractor exercised due care. The favorable decisions discussed below provide a tool in defending such claims that was not previously possible.

Blake provided that a defendant could argue it was the plaintiff’s actions that were the sole proximate cause of his accident, and as such, the Labor Laws should not apply. The *Cahill* decision discussed below provides that the plaintiff’s decision to not use available safety devices can be deemed the proximate cause of his injuries. The *Robinson* case allows defendants to argue that a plaintiff’s actions are the sole proximate cause of his accident when he selects the wrong ladder, even though several ladders — including a proper-sized one — are available to him.

Impact of *Blake* decision

In *Blake*, the New York Court of Appeals issued one of its most significant decisions with respect to strict liability under the Scaffold Law. Rupert Blake, who operated his own construction company, was injured while on a ladder that he owned and had set up improperly. The ladder was steady and in proper working condition. The Court of Appeals held that section 240(1) did not apply, because the accident occurred because of the way in which the plaintiff set up and used the ladder, not because of a defect or malfunction. In *Blake*, the court held that the term strict liability is uniquely defined for the purposes of section 240. Under §240, strict liability requires that a statutory violation caused the accident. The court also held that a fall from a scaffold or ladder is not in itself sufficient to establish a lack of proper protection.

Plaintiffs can still prevail on 240(1) claims post-*Blake*. Many courts have denied post-*Blake* motions for summary judgment or a directed verdict. Nevertheless, with extensive discovery and investigation, these cases are now potentially defensible on liability.

April 2006 *Robinson* case

In *Robinson v. Burns Brothers Contractors, Inc.*, 2006 N.Y. LEXIS 648 (April 4, 2006), the New York Court of Appeals, New York state’s highest court, dismissed the plaintiff’s Labor Law Section 240 claim in a case where the plaintiff failed to ask for a proper ladder for the work that he was doing. In *Robinson*, the plaintiff fell off a ladder while installing pipe hanger systems on overhead steel beams. The plaintiff was using a six-foot ladder and the ceiling was 12 to 13 feet from the floor. The plaintiff also testified that there were eight-foot ladders available to him. He claimed that he asked for an eight-foot ladder, but one was not brought to him. However, he knew where such ladders were kept. Both plaintiff and defendant moved for summary judgment on the Labor Law Section 240(1) claim.

The court found for the defendant and dismissed the plaintiff’s Labor Law Section 240(1) claim. Also, the court found that for liability to attach, the owner or contractor must breach a statutory duty to provide the plaintiff with proper protection. And this breach must be the proximate cause of the plaintiff’s injuries. The court found that there were adequate safety devices for the plaintiff (i.e. the eight-foot ladders), and that the plaintiff’s failure to make use of the proper ladder was the proximate cause of his injuries. In reaching its decision, the court cited *Montgomery v. Federal Express Corp.*, 4 N.Y. 3d 805, a 2005 New York Court of Appeals case that found for the defendant in a Labor Law Section 240 case. In *Montgomery*, the plaintiff was injured when he jumped from an elevator motor room to a roof, rather than going to get a ladder and using

the ladder to climb up to the roof. The court again found that the plaintiff's decision to not use an available ladder was the sole cause of his injury and found for the defendant.

The *Robinson* decision builds on the earlier New York Court of Appeals decision in *Blake*, which dramatically altered the defenses available under Labor Law Section 240.

The Cahill decision

In December 2004, approximately one year after the *Blake* decision, New York's Court of Appeals narrowed the scope of Labor Law Section 240 further. In *Timothy Cahill v. The Triborough Bridge and Tunnel Authority*, 4 N.Y.3d 35, 823 N.E.2d 439, 790 N.Y.S.2d 74 (2004), Timothy Cahill sued the Triborough Bridge and Tunnel Authority under Labor Law Section 240(1). Employed in the reconstruction and repair of the Triborough Bridge in July 1999, Cahill was required to scale up and down wall-like concrete structures known as "forms." A manlift that he could use was present at the site. When a manlift was not available — for example, when it was being used by another worker — Cahill was expected to climb and to descend by using safety lines affixed to the forms. Employees such as Cahill wore safety harnesses that could be attached to a hook on the safety line.

Cahill had been trained in the use of a safety line and admonished on a prior occasion when he neglected to use the line while working at a high elevation. On the day he fell, the manlift was unavailable, so he attempted to descend by safety lines attached to lanyards.

In its *Cahill* decision, the court held that Section 240(1) did not apply because the plaintiff was provided with adequate safety devices and trained in their use. Specifically, the court said the plaintiff not only had adequate safety devices available and knew how to use them, he was expected to use them in the course of his employment. However, plaintiff neglected to use the devices. The court found that it was the plaintiff's decision to descend without the safety devices that was the proximate cause of his injury.

In summary, the courts have been tending to find that in order for there to be a ruling of liability against a defendant for a Labor Law Section 240 claim, there must be some evidence that the proper safety device was not made available to the plaintiff. The courts have begun to put the onus on the plaintiffs to avail themselves of proper safety equipment as long as it is made available at the work site. Therefore, if it can be proven that the proper safety equipment was present at the work site, but simply not used by the plaintiff, the filing of a summary judgment motion may lead the court to dismiss the Labor Law Section 240 claim.

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