

2012 WL 2401850  
Supreme Court, Appellate Division,  
Second Department, New York.

Tomasz Grygo, et al., appellants,  
v.  
1116 Kings Highway Realty, LLC, respondents.

2011-08494 (Index No.  
30335/08) | June 27, 2012

#### Attorneys and Law Firms

Samuel J. Lurie (Parker Waichman Alonso, LLP, Port Washington, N.Y. [Jay L.T. Breakstone], of counsel), for appellants.

Haworth Coleman & Gerstman, LLC, New York, N.Y. (Barry Gerstman and **Richard Barber** of counsel), for respondents.

DANIEL D. ANGIOLILLO, J.P. ARIEL E. BELEN  
SHERI S. ROMAN SANDRA L. SGROI, JJ.

#### Opinion

**ARGUED—MAY 17, 2012**

#### DECISION & ORDER

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated December 21, 2010, as granted those branches of the defendants' motion which were for summary judgment dismissing the causes of action to recover damages pursuant to [Labor Law §§ 240\(1\) and 241\(6\)](#).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The injured plaintiff, a painter, allegedly sustained injuries when a cart holding sheetrock, which was at a worksite located in a large open space, toppled and fell over, causing the cart and sheetrock to strike him in the right leg. At the time of the accident, the injured plaintiff was standing next to the cart, removing plastic sheeting he had previously placed

over the cart to protect it while he painted the worksite. The injured plaintiff, with his wife suing derivatively, commenced this action against the building owner and general contractor, 1116 Kings Highway Realty, LLC, and Sajo Construction, Inc., respectively, seeking to recover damages pursuant to, inter alia, [Labor Law §§ 240\(1\) and 241\(6\)](#). The defendants moved for summary judgment dismissing the complaint, and the Supreme Court granted the motion.

The defendants established their prima facie entitlement to judgment as a matter of law dismissing the cause of action to recover damages pursuant to [Labor Law § 240\(1\)](#) by submitting evidence demonstrating that the injuries resulted from a general hazard encountered at a construction site and were not “the direct consequence of a failure to provide” an adequate device of the sort enumerated in [Labor Law § 240\(1\)](#). Those devices are intended to protect “against a risk arising from a physically significant elevation differential” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603; see *Narducci v. Manhasset Bay Assoc.*, 96 N.Y.2d 259, 268–269; *Misseritti v. Mark IV Constr. Co.*, 86 N.Y.2d 487, 491; *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 501; *Rocovich v. Consolidated Edison Co.*, 78 N.Y.2d 509, 514). In opposition, the plaintiffs failed to raise a triable issue of fact (see *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562).

The cause of action pursuant to [Labor Law § 241\(6\)](#) is predicated on [12 NYCRR 23–2.1\(a\)\(1\)](#), which requires owners and general contractors to store “[a]ll building materials ... in a safe and orderly manner” so as “not [to] obstruct any passageway, walkway, stairway or other thoroughfare” (*id.*). The defendants established their prima facie entitlement to judgment as a matter of law dismissing this cause of action with evidence demonstrating that [12 NYCRR 23–2.1\(a\)\(1\)](#) is inapplicable because the accident occurred in an open area of the worksite, not a “passageway, walkway, stairway or other thoroughfare” (*id.*; see *Cody v. State of New York*, 82 AD3d 925, 928; *Barrios v. Boston Props. LLC*, 55 AD3d 339; *Castillo v. Starrett City*, 4 AD3d 320, 321). In opposition, the plaintiffs failed to raise a triable issue of fact (see *Arredondo v. Valente*, 94 AD3d 920; *DeLeon v. State of New York*, 22 AD3d 786, 788).

Accordingly, the Supreme Court properly granted those branches of the defendants' motion which were for summary judgment dismissing the causes of action to recover damages pursuant to [Labor Law §§ 240\(1\)](#) and [241\(6\)](#).

ANGIOLILLO, J.P., BELEN, ROMAN and SGROI, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

**Parallel Citations**

2012 N.Y. Slip Op. 05139

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