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Cullen and Dykman Construction Litigation Team Wins Summary Judgment in a Ladder Fall Case

April 28, 2021

The Cullen and Dykman Construction Litigation Team recently won summary judgment in a ladder fall construction accident case.

The Plaintiff was a building engineer who fell from an A-frame ladder while closing a valve in connection with tenant work on an air conditioning unit, sustaining shoulder injuries requiring surgery. We successfully argued that Plaintiff, who was employed by the building management company, and not by a contractor or subcontractor, was not a person "employed" within the meaning of Labor Law 240(1) and 241(6). Since Plaintiff was supervised solely by his employer, we successfully argued there was no liability for common-law negligence.

In granting summary judgment to our client dismissing all claims and crossclaims, the Court agreed that because Plaintiff was engaged in "routine maintenance," he was not covered by Labor Law 240(1) or 241(6), emphasizing, "that he was not employed in construction activities controls the outcome here." Further, the court agreed that the protections of Labor Law 240(1) and 241(6) do not extend to non-covered activities that are necessary for the work to be completed.

Although Plaintiff was involved in work necessary to construction, his activities themselves were not covered. This decision furthers the well-established defense for owners and contractors to completely avoid liability in construction labor law cases based on the "routine maintenance" doctrine.

We also successfully defended our client's win by fending off Plaintiff's motion to renew. The Court agreed with our argument that, although termed a motion to renew, it was in fact an untimely motion to reargue, as there was no new evidence not available to Plaintiff at the time of the original application. The Court further agreed that, even if Plaintiff had timely moved to reargue, the application would still be denied, as the Court's initial determination was correct in granting summary judgment to our client.

A copy of the summary judgment decision can be accessed at this link:

https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=6Ds9MGBB/rEehLwnaf5u_PLUS_Q==

A copy of the decision denying the motion for renewal/reargument can be accessed here:

https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=C5zTfpEDYkhlVGMpXAD/fQ==

Practices

- Construction Litigation

Attorneys

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