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NEW YORK LABOR LAW

Summary Judgment for Defendant



Derek E. Barrett

A Westchester County Supreme Court Judge recently granted summary judgment and dismissed plaintiff's labor law claims in favor of a defendant construction management company in the matter of *Richard Wager v. Pelham Union Free School District et al.*



Robert A. Fitch

Robert A. Fitch and Derek E. Barrett of

Rawle & Henderson LLP represented the construction management company.

Plaintiff Richard Wager claimed that he was injured while performing demolition work on the roof of a building when the roof suddenly collapsed. As a result of the accident, plaintiff claimed catastrophic injuries including a traumatic brain injury and the decreased ability to communicate/ambulate. At the time of the accident, Plaintiff was the president of the demolition company hired by the owner of the premises. Plaintiff alleged general negligence claims as well as violations of New York State Labor Law §§200, 240(1), and 241 (6). Plaintiff brought a lawsuit against the owner of the premises, the construction management company, the architectural firm, and structural engineering firm involved in the construction project.

We argued that Plaintiffs' Labor Law §§200, 240(1), 241(6), and common law negligence claims must be dismissed because the defendant construction management company (1) did not direct, supervise, or control the means and methods of plaintiff's work, (2) was not responsible for the site safety of the project, and (3) did not have actual or constructive notice of the alleged condition causing plaintiff's accident.

In granting summary judgment in favor of our client the defendant construction management

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company, the Court found that their duties did not rise to the level of becoming a statutory agent of the owner or general contractor and that all decision making regarding the means and methods of the demolition work rested with the demolition contractor. Accordingly, the Court found that the degree of supervision and control that was assigned to the construction management company was insufficient to impose liability pursuant to Labor Law §§240 and 241 (6). Further, we met our burden dismissing

the Labor Law §200 and general negligence causes of action by establishing that the construction management company did not direct or control the means of the subject demolition.

Richard Wager v. Pelham Union Free School District et al., Supreme Court of the State of New York, Westchester County, Index No. 68572/12

Brooklyn Judge Expands Labor Law §240(1) to Apply to a Tiki Hut

Robert A. Fitch also defended another case with a different result under New York Labor Law. Judge Francois Rivera, a Kings County Judge, recently granted plaintiffs summary judgment motion on liability against the owner of a warehouse where part of a movie was filmed in the matter of *Canfield v. Forman Jay*.

A movie set dresser who was injured during production of the 2011 film “*New Year’s Eve*” in Brooklyn brought claims against the owner of the building, which can have statutorily imposed liability even absent negligence. Plaintiff claims that he was injured on February 8, 2011, when he fell about 10 feet to the concrete floor while attaching thatch-like panels to the roof of a faux tiki hut. The hut was intended to re-create the island of Bali. Plaintiff suffered numerous orthopedic injuries and a closed head trauma with traumatic brain injury claims.

Plaintiff was working from a plywood-floored platform which had been raised by a forklift to the level of the fake hut’s roof when the fall occurred. Judge Rivera rejected the owner’s argument that the tiki hut was not a “structure” within the meaning of the scaffold law. Though the tiki hut existed only for the duration of the movie shoot,

Rivera said it met other standards of being a structure in its size, design, degree of complexity and the manner in which it was put together.

“The assembly of the tiki hut itself and of the tiki-spa set required the use of numerous tools and separate teams of carpenters, set dressers, and scenic painters,” Rivera wrote. “Although the tiki-spa set remained in the building for no more than two months, this factor, in and of itself, is insufficient to outweigh the other factors which strongly support an inference that the tiki hut, either alone or as the central element of the tiki-spa set, was a structure within the meaning of §240(1).”

Labor Law §240(1) makes an owner absolutely liable without fault if a worker falls from a structure and is injured. Judge Rivera cited findings by courts in other cases where non-conventional structures such as the ritual canopy at a Jewish wedding ceremony or the exhibit of windows at a trade show constituted a structure for §240(1) purposes.

Scott Canfield and Caren Keller v. Forman Jay LLC and John Goldstein d/b/a Vinegar Hill Studios, Supreme Court of the State of New York, Kings County, Index No. 13512/12

Robert A. Fitch is the resident partner in our New York City office. Bob concentrates his practice in the defense of architects and engineers, construction, medical and oral surgery malpractice claims, and commercial motor vehicle litigation. He received his undergraduate degree from Syracuse University and his J.D. from Syracuse University College of Law. He is admitted to practice in New York since 1974, as well as in Federal Courts in Southern, Eastern and Northern Districts of New York and the Second Circuit Court of Appeals. Bob has tried over 100 cases to verdict and is a member of the Defense Research Institute, Federal Bar Council, PIAA and Trucking Industry Defense Association. Bob was named a New York Metro Super Lawyer in 2013, 2014 and 2015 by the publishers of *Law & Politics*. He has a peer review rating by Martindale-Hubbell of AV (the highest).

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Derek E. Barrett, Counsel to the Firm in our New York City office, is an active trial lawyer whose practice is concentrated in the areas of commercial motor vehicle litigation, construction and premises liability as well as medical and dental malpractice. He is admitted to practice in New York and New Jersey, and before the U.S. District Court for the District of New Jersey and the United States District Courts for the Northern and Southern Districts of New York. Derek obtained his law degree from New York Law School in 1991. He graduated with a B.S. degree from Queens College of the City University of New York.

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LONG ISLAND



Paul E. Blutman, the resident partner in our Long Island office, has been selected by *Long Island Pulse Magazine* as a “2016 Legal Eagle” in its March 2016 issue. *Long Island Pulse* features this section each year to provide a source for finding the region’s best attorneys. The magazine collaborates with LexisNexis® Martindale-Hubbell® and lists attorneys with the highest standards of the Martindale-Hubbell® Peer Review Ratings™ system (attorneys rated as AV® Preeminent™).

Paul E. Blutman Paul has been rated AV Preeminent by Martindale-Hubbell for 25 years. He concentrates his practice on the defense of medical and dental professionals, hospitals, nursing homes, products manufacturers’ liability, premises liability, toxic torts, auto liability, and commercial and business litigation. He earned both his J.D. and B.A. degrees from Hofstra University. He is a member of the New York State Bar Association, Nassau County Bar Association, Queens County Bar Association and the New York County Bar Association. He is also a founding member of the New York State Medical Defense Bar Association. He is a recipient of the Hofstra University School of Law Distinguished Alumni Award, OMSNIC Rising Star Award and the Hofstra Law Distinguished Faculty Award. He is admitted to practice in the courts of the State of New York, as well as the Federal Courts for the Southern and Eastern Districts of New York.

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PHILADELPHIA BAR ASSOCIATION



Charles A. Fitzpatrick, III

Charles A. Fitzpatrick, III spoke at a CLE event hosted by the **Philadelphia Bar Association Medical Legal Committee** in March 2016. The event, titled "*Compelling a Defendant Physician to Provide Expert Opinion*," included discussion by plaintiff's and defense attorneys on recent case law developments in this area. Charles and the other panelists focused on the recent decision of the Court of Common Pleas Lackawanna County (Nealon, J.) in *Karim v. Reedy*. They discussed whether a defendant physician can be compelled to provide expert opinion regarding her conduct and that of her co-defendants.

Charles A. Fitzpatrick, III, Of Counsel to the firm in our Philadelphia office, focuses his practice in defending medical malpractice, nursing home liability, pharmaceutical and catastrophic injury cases. He is a member of the bar of Pennsylvania and is admitted to practice in the U.S. District Court for the Eastern District of Pennsylvania, the Third Circuit Court of Appeals and the U.S. Supreme Court. Charles graduated from St. Joseph's University in 1969 and the Law School of the University of Pennsylvania in 1976. He served in the United States Navy from 1969 to 1972, achieving the rank of Lieutenant. He served with the Riverine Forces in Vietnam in 1970-1971, and was awarded the Navy Commendation Medal with Combat V and the Combat Action Ribbon. He has tried over 100 cases to verdict. He is a member of the Defense Research Institute, the Philadelphia Association of Defense Counsel, the American Board of Trial Advocates, the American Bar Association and Pennsylvania Bar Association. He has lectured extensively to attorneys and physicians concerning the law of medical malpractice. Charles has been rated AV Preeminent by Martindale-Hubbell for 30 consecutive years. Charles was listed in the 2013 edition of Top Attorneys in Pennsylvania and the 2012 edition of Philadelphia's Top Rated Lawyers. He was named a Pennsylvania "Super Lawyer" by *Law & Politics* from 2004 through 2015.

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UNIVERSITY OF PENNSYLVANIA LAW INTRAMURAL MOCK TRIAL

Suzanne Curran Murphy, an associate in our Philadelphia office, sat as a Judge at the **5th Annual University of Pennsylvania Law School's Intramural Mock Trial Tournament** in February 2016. Students from the law school's mock trial team put on two complete trials, from pre-trial motions through closing arguments. The trials proceed under the Federal Rules of Evidence. Each participant is scored individually with written comments provided by the judges on each performance. At the conclusion of each trial the judges offer feedback and respond to questions from the participants. Students have found this tournament to be an invaluable experience and an instrumental part of their trial advocacy program.



Suzanne Curran Murphy

Suzanne Curran Murphy concentrates her practice in the areas of premises liability, construction litigation and school bus/commercial motor vehicle litigation. She received her Bachelor of Arts degree from Loyola College in 1989 and Juris Doctorate from Widener University School of Law in 1993. She served as a judicial law clerk for the Honorable Frank X. O'Brien, Court of Common Pleas in Philadelphia, PA. She is admitted to practice in the state courts of Pennsylvania and New Jersey as well as the United States District Court for the District of New Jersey and the United States District Court for the Eastern District of Pennsylvania. She has argued successfully before the Pennsylvania Superior Court. Ms. Murphy is an active participant in the University of Pennsylvania Law School's Mock Trial Tournaments.

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