

CHALOS, O'CONNOR & DUFFY

COUNSELLORS AT LAW

366 MAIN STREET
PORT WASHINGTON, NEW YORK 11050-3120

TELEPHONE (516) 767-3600
TELECOPIER (516) 767-3605 & 3925
WEBSITE: WWW.CODUS-LAW.COM

George M. Chalos
Partner
gmc@codus-law.com

Michael G. Chalos
Eugene J. O'Connor
George M. Chalos*
Owen F. Duffy
Charles S. Cumming
Leroy S. Corsa
Timothy Semenoro**
Brian T. McCarthy
George E. Murray
Michael P. Siravo

*Admitted USDC SD- Tx
**Admitted in New Jersey

August 30, 2006

NY LABOR LAW 240: WHAT DOES IT REALLY MEAN?

By George M. Chalos, Esq.

It is a common belief among the Plaintiff's bar, (albeit a mistaken belief), that any case involving a fall from a scaffold or ladder will necessarily result in an award of damages. The NYS Court of Appeals has recently clarified such mistaken belief when it clearly and unambiguously held that "*at no time did the Court or Legislature even suggest that a defendant should be treated as an insurer after having furnished a safe workplace. The point of Labor Law 240 (1) is to compel contractors and owners to comply with the law, not to penalize them when they have done so.*" See Blake v. Neighborhood Housing Service of NYC, 11 N.Y.3d 280 (2003). For your review and reference, we provide the following summary of the salient points of NY Labor Law 240, and this recent Court of Appeals decision interpreting same.

THE HISTORY OF LAW LABOR §240 (1)

The first scaffold law, an ancestor of Labor Law § 240 (1), was enacted 118 years ago (i.e. – in 1885), in response to the Legislature's concern over unsafe conditions for employees who worked at heights. In promulgating the statute, lawmakers reacted to widespread accounts of deaths and injuries in the construction trades. Newspapers carried articles attesting to the frequency of injuries caused by rickety and defective scaffolds. In 1885, there were several articles detailing both the extent of these accidents and the legislation directed at the problem.

The lawmakers enacted the 1885 statute when personal injury suits of this type were based on common law duties of a master to a servant (Vosburg v. Lake Shore & M.S. Ry. Co., 94 NY 374 [1884]; Devlin v. Smith, 89 NY 470 [1882]). For that reason, the Legislature aimed this first scaffold law ("An Act for the protection of life and limb"), at "a person employing or directing another." Even though the first scaffold law exposed violators to civil and criminal responsibility, it fell short of the mark because the employer could escape liability by blaming

CHALOS, O'CONNOR & DUFFY

the employee's co-workers (Kimmer v. Weber, 151 NY 417, 421 [1897]; Butler v. Townsend, 126 NY 105, 111 [1891]). This was changed with an 1897 amendment to the scaffold law, as part of a larger Labor Law initiative dealing with factories, bakeries, tenement-made articles, and the employment of women and children. See Blake, *supra*. The amendment did two things: it placed the onus directly on the employer, and it prompted the Court to interpret the law as creating a presumption of employer liability when a scaffold or ladder collapses.

The Courts have long recognized that sound scaffolds and ladders do not simply break apart (Stewart v. Ferguson, 164 NY 553 [1900]). The legislature looked to employers (and later, contractors and owners) as the entities best able to control the workplace and provide for its safety, casting them in liability for their failure to obey the law.¹ The objective was, and still is, to force owners and contractors to provide a safe workplace, under pain of damages. The 1897 statute was a giant step forward, but it still left employers free to invoke the plaintiff's contributory negligence (Gombert v. McKay, 201 NY 27, 31 [1911]). Indeed, throughout all the scaffold law's amendments, including the present section 240 (1), the statutory language has *never* explicitly barred contributory negligence as a defense. The New York Courts, however, did so in 1948, reasoning that the statute should be interpreted that way if it is to meet its objective (Koenig v. Patrick Constr. Corp., 298 NY 313, 316-317). Since then the NY Courts have repeatedly and consistently held that contributory negligence will not exonerate a defendant who has violated the statute and proximately caused a plaintiff's injury (Zimmer v. Chemung County Performing Arts, Inc., 65 NY2d 513, 521 [1985]; Stolt v. General Foods Corp., 81 NY2d 918 [1993]). At no time, however, did the Court or the Legislature ever suggest that a defendant should be treated as an insurer after having furnished a safe workplace. ***The point of Labor Law § 240 (1) is to compel contractors and owners to comply with the law, not to penalize them when they have done so.*** (Blake, *supra*).

LABOR LAW 240(1) IS NOT A STRICT LIABILITY STATUTE

As briefly state above, the words strict or absolute liability do not appear in Labor Law § 240 (1) or any of its predecessors. Indeed, it was the Court, and not the Legislature, that began to use this terminology in 1923 (under an earlier version of the statute), holding that employers had an "absolute duty" to furnish safe scaffolding and would be liable when they failed to do so and injury resulted (Maleeny v. Standard Shipbuilding Corp., 237 NY 250, 253 [1923]; Amberg v. Kinley, 214 NY 531, 545 [1915] [Collin, J., dissenting]). The Court used a similar phrase 25 years later in Koenig, *supra*, [a duty "absolutely imposed"]. In 1958, in Connors v. Boorstein (4 NY2d 172, 175 [1958]) the Court, for the first time, worded the concept as "absolute liability" under section 240 (1), and did so again in Major v. Waverly & Ogden, Inc. (7 NY2d 332, 336 [1960] ["absolute statutory liability"]) and Duda v. Rouse (32 NY2d 405, 408 [1973] ["absolute liability"]).

NY Courts have also directed liability under Labor Law § 240 (1) as "absolute" in the sense that owners or contractors not actually involved in construction can be held liable (Haimes v. New York Telephone Co., 46 NY2d 132, 136 [1978], regardless of whether they exercise

¹ In 1969, the Legislature amended section 240 (1) to place the responsibility on "all contractors and owners and their agents" in place of "a person employing or directing another to perform labor of any kind" (L 1969, ch 1108).

supervision or control over the work (Ross v. Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 500 [1993]). Intending the same meaning as absolute liability in Labor Law § 240 (1) contexts, the Court in 1990 introduced the term “strict liability” (Cannon v. Putnam, 76 NY2d 644, 649) and from that point on used the terms interchangeably.

Throughout Labor Law 240 (1) jurisprudence, the NY Courts have stressed two (2) points in applying the doctrine of strict (or absolute) liability. First, that liability is contingent on a statutory violation and proximate cause. As the NY Courts succinctly stated in Duda, supra, “[v]iolation of the statute alone is not enough; plaintiff [is] obligated to show that the violation was a contributing cause of his fall,” and second, that when those elements are established, contributory negligence cannot defeat a plaintiff’s claim. As such, section 240 (1) is an exception to CPLR 1411, which recognizes contributory negligence as a defense in personal injury actions (Mullen v. Zoebe, Inc., 86 NY2d 135, 143 [1995]; Bland v. Manocherian, 66 NY2d 452, 461 [1985]).

The phrase “strict (or absolute) liability” in the Labor Law § 240 (1) context is different from the use of the legal term elsewhere. Given the varying meanings of strict (or absolute) liability in different settings, it is not surprising that the concept has generated a good deal of ambiguity, as well as uncertainty and litigation under Labor Law §240 (1), including the mistaken belief that a fall from a scaffold or ladder, in and of itself, will result in an award of damages to the injured party. The NYS Court of Appeals clearly and unambiguously held: “*that is not the law, and we have never held or suggested otherwise.*” See Blake, supra. Narducci v. Manhasset Bay Assoc. (96 NY2d 259, 267 [2001]), (“*Not every worker who falls at a construction site, and not any object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1)*”); Beesimer v. Albany Avenue/Route 9 Realty, Inc. (216 AD2d 853, 854 [3d Dept 1995]). (“*the mere fact that [a plaintiff] fell off the scaffolding surface is insufficient, in and of itself, to establish that the device did not provide proper protection*”); Alava v. City of New York, 246 AD2d 614, 615 [2d Dept 1997] (“*a fall from a scaffold does not establish, in and of itself, that proper protection was not provided*”).²

In simple terms, an accident alone does not establish a Labor Law § 240 (1) violation or causation. The NY Courts have repeatedly explained that “strict” or “absolute” liability is necessarily contingent on a violation of section 240 (1). In Melber v. 6333 Main Street, Inc. 91 NY2d 759, 762 [1998]), the Court noted that “*we have held that the statute establishes absolute liability for a breach which proximately caused an injury.*” In Zimmer (65 NY2d at 522), the Court found that “*a violation of section 240 (1) * * * creates absolute liability*” and that “[t]he failure to provide any safety devices is such a violation.” Moreover, causation must also be established. As the Court held in Duda (32 NY2d at 410 [1973]), the “*plaintiff was obligated to show that the violation [of section 240 (1)] was a contributing cause of his fall.*”

² In cases involving ladders or scaffolds that collapse or malfunction for no apparent reason, NY Courts have continued to aid plaintiffs with a presumption that the ladder or scaffolding device was not good enough to afford proper protection. See Panek v. County of Albany (99 NY2d 452, 458 [2003]) [summary judgment appropriate for the plaintiff where it was uncontroverted that a ladder collapsed beneath him, causing the fall]; Styer v. Walter Vita Constr. Corp. (174 AD2d 662 [2d Dept 1991]); Olson v. Pyramid Crossgates Co. (291 AD2d 706 [3d Dept 2002]). Once the plaintiff makes a prima facie showing the burden then shifts to the defendant, who may defeat plaintiff’s motion for summary judgment only if there is a plausible view of the evidence – enough to raise a fact question – that there was no statutory violation and that plaintiff’s own acts or omissions were the sole cause of the accident. If defendant’s assertions in response fail to raise a fact question as to these issues, the plaintiff must be accorded summary judgment (see Klein v. City of New York (89 NY2d 833, 835 [1996])). On the other hand, defendant may be granted summary judgment if the record establishes conclusively that no Labor Law § 240 (1) violation was shown to have been a proximate cause of the accident and that the accident was therefore caused solely by plaintiff’s conduct (see e.g. Stark v. Eastman Kodak Co., 256 AD2d 1134 [4th Dept 1998]; Custer v. Cortland Housing Authority, 266 AD2d 619, 621 [3d Dept 1999]).

In short, there can be no liability under section 240 (1) when there is no violation and the worker's actions (i.e., his negligence) are the "sole proximate cause" of the accident. In Blake, the Court expressly held that, "*extending the statute to impose liability in such a case would be inconsistent with statutory goals since the accident was not caused by the absence of (or defect in) any safety device, or in the way the safety device was placed.*" Additionally, in Weininger v. Hagedorn & Co. (91 NY2d 958, 960 [1998]), the NYS Court of Appeals held that "Supreme Court erred * * * in directing a verdict in favor of plaintiff, at the close of his own case, on the issue of proximate cause" where "a reasonable jury could have concluded that plaintiff's actions were the sole proximate cause of his injuries, and consequently that liability under [section 240 (1)] did not attach." The Appellate Division also has held (both before and after Weininger) that a defendant is not liable under Labor Law § 240 (1) where there is no evidence of violation and (2) the proof reveals that the plaintiff's own negligence was the sole proximate cause of the accident.

Finally, while it is well settled that the Labor Law is to be construed liberally, the facts of any Labor Law case must be analyzed within the context and purpose of the statute. In this regard, the Court of Appeals has recently held that:

The language of Labor Law § 240 (1) "must not be strained" to accomplish what the Legislature did not intend (citing Martinez v. City of New York, 93 NY2d 322, 326 [1999]). If liability were to attach even though the proper safety devices were entirely sound and in place, the Legislature would have simply said so, or made owners and contractors into insurers. Instead, the Legislature has enacted no-fault workers' compensation to address workplace injuries where, as here, the worker is entirely at fault and there has been no Labor Law violation shown. (See Blake, supra).

In conclusion, while we trust the foregoing is self-explanatory, we stand ready to respond to any and all inquiries you, your colleagues and/or your clients may have. Of course, any specific substantive liability analysis will necessarily depend on the facts and circumstances of the underlying incident. We are, of course, available to assist in any way we can, and for your convenience, George M. Chalos, Esq. can be contacted either at the above details, or on a 24/7 basis on his mobile telephone (+516-721-4076). Additionally, if more convenient, Mr. Chalos can be contacted via Email at gmc@codus-law.com.