The Effect of Co-workers' Actions in Scaffold Law Cases

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The superseding actions of a third party have long been recognized in negligence cases as breaking the link between a defendant's conduct and a plaintiff's injury. The defense is also available when defending Labor Law § 240(1) claims, and Labor Law attorneys should keep this in mind.

Labor Law § 240(1), also known as The Scaffold Law, imposes absolute liability on contractors and owners for workplace accidents in which a worker is injured as a result of an elevation risk. The duty to supply necessary security devices is non-delegable.

However, the Court of Appeals in Blake v. Neighborhood Housing Services of New York, 1 N.Y.3d 280, 771 N.Y.S.2d 484 (2003) established that liability under Labor Law § 240(1) will only exist where there is both a violation of the statute, and a finding that the violation caused the accident. As the Court stated, "[A]n accident alone does not establish a Labor Law § 240(1) violation or causation." Blake, at 289.

Courts have recognized two main defenses to the Scaffold Law. The sole proximate cause defense allows a contractor or owner to escape liability if it can demonstrate that the worker's own negligence was the only cause of the accident. See Blake, 1 N.Y.3d 280, 771 N.Y.S.2d 484 (2003). A second option, the recalcitrant worker defense, allows a defendant to demonstrate that the worker rejected adequate safety devices made available by the owner or contractor. See Cahill v. Triborough Bridge and Tunnel Authority, 4 N.Y.3d 35, 790 N.Y.S.2d 74 (2004).

A third way to combat a claim made under Labor Law § 240(1) is to argue that the actions of co-workers were an unforeseeable, superseding and intervening event that caused the accident. The Second Department has dealt with this issue numerous times, and most favorably for defendants, in Bernal v. City of New York, 217 A.D.2d 568, 628 N.Y.S.2d 823(2d Dept. 1995).

The Bernal plaintiff fell when one of his co-workers was attempting to lower him on a Hi-Lo machine. The Hi-Lo bumped into adjacent scaffolding, and the scaffolding then collapsed, injuring the plaintiff.

The plaintiff moved for summary judgment on the basis of Labor Law § 240(1). The Second Department upheld the lower court's denial of the plaintiff's summary judgment motion. The court found that, "[A] reasonable fact-finder might conclude that the co-worker's conduct was the sole proximate cause of the plaintiff's injuries or that the co-worker's conduct constituted an unforeseeable superseding, intervening act." See Bernal, 217 A.D.2d at 569.

Central to the court's finding that the co-worker's actions were unforeseeable was the fact that no worker had previously used a Hi-Lo at the site to raise or lower workers on the scaffolding structure. This decision, then, offers a third avenue by which a practitioner can defeat a motion for summary judgment made pursuant to Labor Law § 240(1) claim: he can raise an issue of fact as to the accident's cause by establishing that a co-worker committed an unforeseeable act that led to the accident.

The Second Department's decisions since Bernal indicate that the determination of whether a co-worker's actions are forseeable rests on each case's facts. In DeSousa v. Brown, 280 A.D.2d 447, 721 N.Y.S.2d 69 (2d Dept. 2001), for instance, the plaintiff-bricklayer fell from a scaffold when a co-worker adjusted a pin and brace on the scaffold and caused it to wobble. The plaintiff moved for summary judgment on Labor Law § 240(1) grounds, and the motion court denied the application. The Second Department reversed the motion court, and granted the motion, finding that the co-worker's adjustment of the pin was foreseeable and not so extraordinary so as to be a superseding cause of the accident.

Similarly, in Van Eken v. Consolidated Edison Company of New York, 294 A.D.2d 352, 742 N.Y.S.2d 94 (2d Dept. 2002), the plaintiff was working in a trench when a co-worker at street level released his grasp on a jackhammer in an attempt to deflect a falling piece of plywood. The jackhammer struck the plaintiff, and the plaintiff moved for summary judgment on Labor Law § 240(1) grounds. The motion court denied the

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motion, but the Second Department reversed, finding that the co-worker's acts were foreseeable and not a superseding, intervening cause of the accident.

The First Department has also considered this issue of co-worker negligence. In Montalvo v. J. Petrocelli Construction, Inc., 8 A.D.3d 173, 780 N.Y.S.2d 558 (1st Dept. 2004), the plaintiff was on a ladder holding a plenum while a co-worker drilled a hole in it. The ladder was not secured. The plenum suddenly fell from the plaintiff's grasp and struck the ladder, causing the plaintiff to fall. The defendant moved for summary judgment on Labor Law § 240(1) grounds, and the motion court granted that relief. The First Department reversed and granted summary judgment to the plaintiff, finding that the actions of the plaintiff and the co-worker were not so extraordinary as to constitute a superseding cause of the accident.

Bernal, then, stands alone as a case in which co-worker negligence was found sufficient to raise an issue of fact as to the cause of an accident in a Labor Law § 240(1) analysis. Still, Bernal remains good law.

Attorneys defending owners or contractors, then, should take advantage of this third Scaffold Law defense by determining whether a plaintiff's co-workers have done anything unforeseeable that might have caused the alleged accident.