New York Law Journal

COURT DECISION

DECISIONS OF INTEREST

APPELLATE DIVISION | LABOR LAW dec.nylj.com/1202489346572

§§240(1), 241(6) Claims Stemming From Road's Removal From Bridge Are Reinstated

Justice Catterson
First Department

Harris, an ironworker, was hurt while working on New York City-owned Macombs Dam Bridge spanning the Harlem River between Manhattan and the Bronx. Harris was thrown to the ground, and struck a barrier, when a one-ton road deck slab—a concrete-filled steel grid—descended too quickly, shattering a wood plank on which he stood in an effort to pry the slab from the rest of the roadbed. Harris' claims alleging violations of Labor Law §§240(1) and 241(6) were summarily dismissed. The First Department reinstated his claims. The slab's removal involved use of a piece of wood as a wedge to extricate the slab—attached to a crane by steel cables lowered from a higher to a lower elevation so as to exert pressure on the wedge and dislodge the attached portion of the slab—from the road. As in *Runner v. New York Stock Exch. Inc.*, Harris' injury was as direct a consequence of the slab's descent as would have been an injury to a worker in the descending slab's path. Because his foreman directed him to stand on the wood to keep it in place, Harris could not, as a matter of law, be the sole proximate cause of his injuries. As in *Runner* no safety devices guarded against injuries caused by the slab's unregulated descent.

Harris v. City of New York, 25569/03 (April 5)

NEW YORK | CIVIL PRACTICE dec.nylj.com/1202489351828

Doctor's Notice to Admit Stricken as Improper, Barred From Use of Patient's Responses

Justice Schlesinger
Supreme Court

In this medical malpractice action, plaintiffs moved for a protective order regarding defendant physician's notice to admit, served by Swift. They argued Swift improperly used the notice. Plaintiffs alleged Swift departed from accepted standards of care and failed to obtain informed consent. Swift sought two admissions in the notice and rejected plaintiff's response as untimely, asserting he treated both matters as admitted. The court rejected Swift's allegation that plaintiff waived any objections to the notice as the response was in improper form. It noted the defect was minor and corrected, and concluded Swift did not reject the response on such ground, but only for untimeliness. The court found Swift's notice improper, noting appellate courts repeatedly enforced CPLR 3123 barring a party from utilizing a notice to admit regarding matters likely to be in dispute or addressing material issues. It ruled the issue of whether plaintiff received certain brochures relating to the derma-filler Sculptura and its use was a material issue, finding Swift's contention he was merely seeking to confirm the "genuineness of the brochures" disingenuous. Therefore, the notice to admit was stricken and Swift was barred from relying on any part of plaintiff's response.

Baran v. Swift, 106530/10 (March 28)

NEW YORK | CONTRACTS

Questions of Fact Summary Judgm

Stevens Van Lines mov ment against defenda age. Stevens was hired to n goods until they were ready Carolina. Stevens was liab loss or damage, and hired I in its secured warehouse. In items in an unsecured trail and items were stolen and the client the replacement arguing the parties' contrac the goods in a warehouse, r not dispute the existence o store the items in its ware evidence supporting its cl agreement was negotiated v such evidence sufficient t required Don's to store th Don's evidence, while "hard not properly resolved on a of fact existed as to wheth motion.

Stevens Van Lines Inc. v. Do

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