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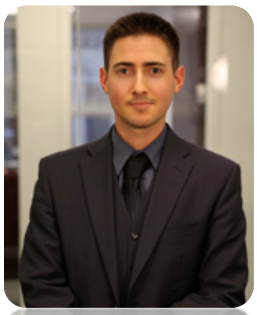
Update on Falling Object in Labor Law

By Sterling E. Tipton



The Court of Appeals recently decided a case involving a claim of a "falling object" under the Labor Law, and effectively reaffirmed earlier caselaw that requires the plaintiff to prove the absence or inadequacy of a safety device in order to succeed on such a claim. New York Labor Law Section 240(1), requires contractors, owners and their agents to provide safety devices, such as hoists, that are "so constructed, placed and operated as to give proper protection to a person ... employed" as a laborer "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure". Section 240(1) imposes "absolute liability where the failure to provide such protection is a proximate cause of a worker's injury". Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp., 18 N.Y.3d 1, 959 N.E.2d 488, 492 (2011).

Over ten years ago in Narducci v. Manhasset Bay Associates, 96 N.Y.2d 259, 750 N.E.2d 1085, 1088 (2001), the Court of Appeals held that one critical inquiry of whether Labor Law §240(1) applied depended upon whether the falling object or falling worker resulted from "the absence or inadequacy of a safety device of the kind enumerated in the statute". Narducci emphasized that in a "falling object" situation, "a plaintiff must show more than simply that an object fell causing injury to a worker" before the courts will impose strict liability under Section 240(1). Id at 268. Rather, a plaintiff also had to prove that the hazard arose from the failure to use, or the inadequacy of, a safety device. Id at 267. The Narducci holding also ruled that Section 240(1), in a "falling object" case, would not apply where there was no height differential between the plaintiff and the object causing the injury. Id.

Since the decision of Runner v. New York Stock Exchange, Inc., 13 N.Y.3d 599, 895 N.Y.S.2d 279, 922 N.E.2d 865 (2009), however, the Court of Appeals has taken a different approach. In Runner, the plaintiff was injured when he and other coworkers lowered a large reel of wire down a set of stairs, using a rope attached to the reel to act as a counterweight. The counterweight was insufficient to control the descent of the reel, which moved down the stairs, pulling the plaintiff towards a metal bar anchoring the rope, causing injuries to both hands. The Court of Appeals held in Runner the central inquiry was *not* the height differential, but "whether the harm flows directly from the application of the force of gravity to the object". Id at 604. The opinion by Chief Judge Lippman also acknowledged the inadequacy of the safety device, i.e. the 10-foot length of rope, provided to the plaintiff to control the reel's descent. Id at 603.

In late February of this year, the Court of Appeals decided the case of Fabrizi v. 1095 Avenue of the Americas, in which a divided Court declined to apply Section 240(1) to an accident involving falling electrical conduit. The plaintiff, an electrician, was relocating a "pencil box" which was attached to and situated between two, four-inch wide, eight to ten feet long conduits running vertically from the box to the ceiling. The top of the conduit was connected to the ceiling by a four inch compression coupling. The plaintiff had removed the pencil box, and approximately 15 minutes later, the top portion of the conduit fell on the plaintiff's hand. The issue

before both the motion court and the Appellate Division depended upon whether the coupling constituted a "safety device" as described by Section 240(1).

The Court of Appeals held that the compression coupling was not a safety device "constructed, placed, and operated as to give proper protection" from the falling conduit, but rather, that the coupling's only purpose was to keep the conduit together with the pencil box. In so holding, the opinion by Judge Pigott emphasized, citing Narducci, that "[c]ontrary to the dissent's contention, Section 240(1) does not automatically apply simply because an object fell and injured a worker; 'a plaintiff must show that the object fell ... *because of* the absence or inadequacy of a *safety device* of the kind enumerated in the statute'". Dissenting, Judge Lippman and Judge Rivera cited Runner, arguing that the "single decisive question" in applying Section 240(1) is whether the injury resulted from the failure of adequate protection against a "gravity related accident". The dissent also argued that the availability of Section 240(1) should not depend upon whether the couplings were "safety devices" or merely a part of the building's infrastructure.

Ultimately, the Court of Appeals' opinion in Fabrizi arguably represents a narrower application of Section 240(1) than previously set forth in Runner. First, the ruling re-emphasizes the holding of Narducci, requiring plaintiffs to prove not only a "gravity-related injury", but further, the failure or absence of a *specific safety device* that would have prevented such an injury. Since Runner, the trial courts have typically focused upon the former requirement, but the opinion of Fabrizi clarifies that there must also be an inadequate or absent safety device specifically intended to prevent a falling object for the purpose of worker safety.

Second, the language of Fabrizi could prove useful in defending against such claims where the mechanism in question might not constitute a "safety device" designed to prevent accidents. The holding provides a foundation for an argument against the application of Section 240(1) where the defendant demonstrates that the accident was not caused by the failure of a "safety device", but rather something integral to the building's infrastructure, or otherwise simply not intended as a "safety device". Based upon the Fabrizi opinion, in order to determine whether the offending object qualifies as a "safety device", the trial court should examine the purpose of the object in question, and decide whether the object was "constructed, placed, and operated as to give proper protection" for workers on the construction site, as enumerated in Labor Law Section 240(1). It may be wise to retain an expert familiar with the object in question to provide an opinion on the purpose of the object, under circumstances where trade knowledge and experience would prove useful to the trial court's considerations of whether Section 240(1) applies, if presented with a similar issue.

THE LAW FIRM OF
HANNUM FERETIC PRENDERGAST & MERLINO, LLC
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 202
NEW YORK, NY 10006
(212) 530-3900
TELEFAX: (212) 530-3910