

Scoz v J&Y Elec. & Intercom Co. Inc.
2016 NY Slip Op 01763
Decided on March 15, 2016
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on March 15, 2016

Sweeny, J.P., Richter, Manzanet-Daniels, Gische, JJ.

488

[*1]Aldo Scoz, 152630/12E Plaintiff-Appellant,

v

J & Y Electric and Intercom Company Inc., et al., Defendants-Respondents. [And a Third-Party Action]

Zalman Schnurman & Miner P.C., New York (Marc H. Miner of counsel), for appellant.

Law Offices of Safranek, Cohen & Krolian, White Plains (Matthew F. Rice of counsel), for J & Y Electric and Intercom Company Inc., respondent.

Harrington, Ocko & Monk, LLP, White Plains (I. Paul Howansky of counsel), for the Elizabeth Seton Housing Development Fund Corporation, respondent.

Order, Supreme Court, New York County (Eileen A. Rakower, J.), entered August 7, 2014, which, to the extent appealed from as limited by the briefs, granted defendants' motions for

summary judgment dismissing the Labor Law § 241(6) cause of action as against them, and denied plaintiff's cross motion for partial summary judgment on that claim, unanimously affirmed, without costs.

Plaintiff, an independent contractor, who intentionally used the wrong tool for the job, and rigged it a manner that he knew was unsafe, was the sole proximate cause of his accident (*see Kerrigan v TDX Constr. Corp.*, 108 AD3d 468 [1st Dept 2013], *lv denied* 22 NY3d 862 [2014]). The lack of guards or a spreader that may have been required by Industrial Code (12 NYCRR) § 23-1.12(c) resulted from plaintiff's misuse of the saw. Similarly, while 12 NYCRR 23-1.5(c) requires damaged equipment to be replaced or repaired, the use of a saw lacking a guard was the result of plaintiff's intentional use of the wrong, jury-rigged tool, and the manner in which he used the saw, so that only the blade protruded from the plywood, would have rendered any guard ineffectual.

Plaintiff's reliance on *Leon v Peppe Realty Corp.* (190 AD2d 400 [1st Dept 1993]) is misplaced; to the extent *Leon* holds that the failure to provide reasonable and adequate protection is a violation of Labor Law § 241(6) without reference to any Industrial Code provision, it is not [*2] good law (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-505 [1993]).

We have considered plaintiff's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 15, 2016

CLERK

[Return to Decision List](#)