Case Law Summaries

NY CASE LAW SHORTS

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Practice Areas

Personal Injury

New York Court of Appeals

Labor Law/Elevation Risk/Safety Devices. Plaintiff was doing construction work and fell while placing debris into a container. The task required Plaintiff to stand on the top of the side of the container with one foot while placing the debris into the container. Plaintiff sued the owner of the property contending that the owner failed to have safety devices (scaffold) in place pursuant to provisions of the Labor Law. The Supreme Court granted summary judgment to the defendant, holding the the elevation safety devices listed in the Labor Law were, as a matter of law, not required here because the work was not high enough. Defendant relied upon a prior case involving a fall from the bed of a flatbed trailer. (The Court in that case ruled that the height of the flatbed trailer (4-5 feet) did not trigger any duty to maintain the elevation safety devices listed in Labor Law 240(1).) The appellate court sustained but the Court of Appeals modified, distinguishing the height of the work platform (4-5 feet on the flatbed vs. 6 feet on the container)... "However, the present case, with the facts considered in the light most favorable to the non-moving party, is distinguishable from Toefer. Ortiz's particular task of rearranging the demolition debris and placing additional debris in the dumpster, as he describes it, required him to stand at the top of the dumpster, six feet above the ground, with at least one foot perched on an eight-inch ledge. Moreover, defendants failed to adduce any evidence demonstrating that being in a precarious position such as this was not necessary to the task. Nor do defendants demonstrate that no safety device of the kind enumerated in § 240 (1) would have prevented his fall." Ortiz v Varsity Holdings, LLC, 2011 NY Slip Op 09161, Court of Appeals, December 20, 2011

Opinion

Self-Insured/Uninsured Motorist Benefits/Worker's Compensation Law: Plaintiff is an employee of Defendant, a car rental company. Plaintiff was driving a company car and was injured during an accident with an uninsured vehicle. Defendant was self insured. Plaintiff sought workers compensation and uninsured motorist benefits. The Defendant argued that, as Plaintiff sought worker's compensation, Plaintiff was prevented from also recovering for uninsured benefits. "Workers' Compensation Law § 11 states 'The liability of an employer [for workers' compensation benefits] . . . shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at

common law or otherwise, on account of such injury or death or liability arising therefrom.'". However, the Court stated the law did not contemplate a reduction in uninsured benefits by reason of self-insured allowances and that "[a]lthough the words 'any other liability whatsoever' seem all-inclusive, there are cases - of which this is one - in which they cannot be taken literally (see Billy v Consolidated Mach. Tool Corp., 51 NY2d 152 [1980]). Specifically, the statute cannot be read to bar all suits to enforce contractual liabilities. If an employer agrees, as part of a contract with an employee, to provide life insurance or medical insurance, and breaches that contract, an action to recover damages for the breach would not be barred, though the action might literally be 'on account of . . . injury or death.'... 'An action against a self-insurer to enforce the liability recognized in Shaw is, in our view, essentially contractual. The situation is as though the employer had written an insurance policy to itself, including the statutorily-required provision for uninsured motorist coverage. This action is therefore not barred by Workers' Compensation Law § 11." Matter of Matter of Elrac, Inc. v Exum, 2011 NY Slip Op 08961, Court of Appeals, December 13, 2011

Opinion

Appellate Division, Second Department

REAL ESTATE

Judicial Activism/Foreclosure: Defendants defaulted on payment of their note and the mortgage company foreclosed. The mortgage company moved for an order of reference but the Supreme Court, Kings County, denied and sua sponte, ordered the Defendants to make reduced monthly payments, to submit financial documents and increase payments after plaintiffs' illness passed. On appeal, the Second Department reversed stating that the Court acted without the scope of its authority... "Here, the Supreme Court improvidently exercised its discretion in denying that branch of the plaintiff's motion which was for an order of reference and in making certain directives sua sponte....In addition, the relief granted by the Supreme Court, sua sponte, exceeded the scope of its authority in deciding the motion." Emigrant Mtge. Co., Inc. v Fisher, 2011 NY Slip Op 09264, Appellate Division, Second Department, December 20, 2011

Opinion

Adverse Possession/Pre-Revision Application: Plaintiff brought suit to establish ownership of a strip of land upon which Plaintiff had maintained arborvitae and other plantings. Plaintiff produced the affidavit of its predecessor to establish the maintenance of the strip of land by the Plaintiff and the predecessor running from 1986. Defendant produced its own affidavit to establish that its predecessor planted the trees. The Supreme Court, Westchester County, ruled that the 2008 revisions to the adverse possession rules were not applicable here because the rights as pleaded, had vested prior to the enactment of the revisions. However, the Court granted summary judgment for the Defendant and denied for the Plaintiff. The Court found that competing affidavits created a question of fact. However, the Second Dept. reversed and granted for the plaintiff, stating that the Defendant's affidavit was based upon hearsay. Shilkoff v Longhitano, 2011 NY Slip Op 09305, Appellate Division, Second Department, December 20, 2011

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New York Case Law Shorts by Johnny D. Hall. Questions or Comments? email: johnny@hallesq.com

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