

Supreme Court, Appellate Division, First Department, New York.

Freddie BUSH, Plaintiff–Respondent,

v.

The GOODYEAR TIRE & RUBBER COMPANY, et al., Defendants,
Blockbuster Inc., Defendant–Appellant.

July 1, 2004.

Synopsis

Background: Contractor's employee brought Labor Law action against lessee to recover for injuries allegedly sustained during fall from dumpster while performing work on lessee's premises. The Supreme Court, New York County, [Louise Gruner Gans](#), J., denied lessee's motion for summary judgment, and lessee appealed.

Holding: The Supreme Court, Appellate Division, held that absence of a safety device for use in climbing ground-level dumpster created kind of foreseeable risk which was within contemplation of scaffold law.

Affirmed as modified.

West Headnotes (1)[Expand West Headnotes](#)

[272Negligence272XVII](#)Premises Liability[272XVII\(G\)](#)Liabilities Relating to Construction, Demolition and Repair[272k1204](#)Accidents and Injuries in General[272k1204\(4\)](#)Safe Workplace Laws[272k1204\(6\)](#)Scaffolding Laws **Attorneys and Law Firms**

{ "pageset": "S1180" } **206 Baxter & Smith, P.C., Jericho (Anne Marie Ladia of counsel), for appellant.

DiJoseph & Portegello, P.C., New York [Arnold E. DiJoseph, III](#) of counsel, to Roth & Roth, LLP, for respondent.

[BUCKLEY](#), P.J., [MAZZARELLI](#), [FRIEDMAN](#), [GONZALEZ](#), [CATTERSON](#), JJ.

Opinion

{ "pageset": "S1180" } *252 Order, Supreme Court, New York County (Louise Gruner Gans, J.), entered October 17, 2003, which, to the extent appealed from, denied defendant Blockbuster's motion for summary judgment dismissing plaintiff's claims based on [Labor](#)

Law § 240(1) and § 241, unanimously modified, on the law, and on a search of the record, partial summary judgment granted plaintiff as to liability on his § 240(1) claim, and otherwise affirmed, without costs.

Plaintiff's employer was hired by Blockbuster to perform certain construction work at Blockbuster's leased premises. {"pageset": "S1180"}*253 Part of the work entailed piling debris into a ground-level dumpster for disposal the following morning. While plaintiff was atop the dumpster, attempting to level the debris inside, his arm hit a wire and he fell to the ground. Because the work in which he was engaged required him to climb the dumpster, the absence of a proper safety device created the kind of foreseeable risk within the contemplation of § 240(1) (see *Oliveira v. Dormitory Auth. of State of N.Y.*, 292 A.D.2d 224, 739 N.Y.S.2d 58).

Blockbuster's status as a tenant does not shield it from liability under sections of the Labor Law pertaining to property owners. The fact that Blockbuster was in control and hired the contractor to do the work for its benefit determines the issue here (see *Bart v. Universal Pictures*, 277 A.D.2d 4, 715 N.Y.S.2d 240).

Parallel Citations

9 A.D.3d 252, 779 N.Y.S.2d 206, 2004 N.Y. Slip Op. 05737