

71 A.D.3d 593

(Cite as: 71 A.D.3d 593, 899 N.Y.S.2d 153)

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Keane v. Chelsea Piers, L.P.
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NY,2010.

71 A.D.3d 593899 N.Y.S.2d 153, 2010 WL
1190812, 2010 N.Y. Slip Op. 02656

Patrick Keane, Appellant
v
Chelsea Piers, L.P., et al., Respondents.
Supreme Court, Appellate Division, First Depart-
ment, New York

March 30, 2010

CITE TITLE AS: Keane v Chelsea Piers, L.P.

HEADNOTE

Labor
Safe Place to Work

Labor Law § 240 (1) claim was reinstated; plaintiff was injured while working under pier when waves caused floating stage on which he was kneeling to drop while he was sawing board, which in turn caused board to fall on top of him; given that swing in elevation of stage due to waves was understood by all as risk of construction site, and accident could not have occurred without differential in elevation between plaintiff and board above him, injuries caused by falling board were contemplated by section 240 (1).

Friedman, James & Buchsbaum LLP, New York
(Andrew V. Buchsbaum of counsel), for appellant.

John V. Coulter, New York, for respondents.
Judgment, Supreme Court, New York County (O. Peter Sherwood, J.), entered January 8, 2009, dismissing the action, and bringing up for review an order, same court and Justice, entered October 21, 2008, directing a verdict, after jury trial, in favor of defendants, dismissing plaintiff's common-law negligence and Labor Law §§ 200 and 240 (1) claims,

unanimously *594 reversed, on the law, without costs, the judgment vacated, the order modified to reinstate the section 240 (1) claim, and a new trial directed thereon with respect to injuries sustained from the falling board.

Plaintiff was injured while working under a pier when the action of waves caused the floating stage on which he was kneeling to drop while plaintiff was sawing a board. This drop caused the board to fall on top of him. Given that the swing in elevation of the stage due to tides and waves was understood by all as a risk of this particular construction site, and the accident could not have occurred without the differential in elevation between the plaintiff (in the wave's trough) and the board above him, the injuries caused by the falling board were plainly contemplated by section 240 (1) (*see Dooley v Peerless Importers, Inc.*, 42 AD3d 199 [2007]; *see also generally Runner v New York Stock Exch., Inc.*, 13 NY3d 599 [2009]). Plaintiff's other injuries, caused by the wave lifting him up and knocking him against the bottom of the pier, are not similarly covered.

The court was correct in dismissing the statutory and common-law negligence claims against the tenants in possession. The accident was caused by waves from the wakes of passing vessels, an obvious condition known to plaintiff and his employer (*Bombero v NAB Constr. Corp.*, 10 AD3d 170 [2004]). We further note that bifurcation of the liability and damages issues **2 at trial was not an improvident exercise of discretion (*Sommer v Pierre*, 51 AD3d 464 [2008]), inasmuch as plaintiff was permitted to put on medical evidence in rebuttal. Concur—Saxe, J.P., Catterson, Moskowitz, Freedman and Román, JJ.

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York
NY,2010.
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