

Decisions of Interest: Section 240, Assumption of Risk, Trivial Defect

Three Wins in Three Days for Kaufman Dolowich & Voluck Attorneys in the First and Second Appellate Department and the Supreme Court of New York

Anthony Campbell v. Woodbrooke Estates Condominium, et al., 12924/2010 (Sup Ct. Kings Cty. 2013),

Last week, the Supreme Court, County of Kings, dismissed claims brought by an injured Verizon employee who allegedly fell and sustained multiple injuries requiring several surgical procedures, while working at a residential condominium complex. Plaintiff sued under New York's Labor Law Section 240(1) (which imposes absolute liability upon a property owner where a construction worker is injured while working at an elevated height); Section 241(6), which imposes liability for injuries at an unsafe worksite and Section 200, which is a codification of common law negligence. Kenneth B. Danielsen of the New York and New Jersey offices of Kaufman Dolowich & Voluck, supervised by Gino A. Zonghetti, managing partner of the New Jersey office, successfully obtained summary judgment by arguing that plaintiff was not a worker that should be covered under the statute and was not engaged in an activity properly covered under the Labor Law. Plaintiff had demanded \$750,000 and no offer was ever made.

To read the Court's full decision, [click here](#).

Leonard Hutchinson v. Sheridan Hill Housing Corp., __Ad.3d__ (1st Dept. 2013),

In a split decision by the Appellate Division, First Department, the Court upheld dismissal of plaintiff's case by the Supreme Court of Bronx County, upon the theory that an alleged defect was "trivial" and that the defendant established, as a matter of law, that it lacked notice of a "defective condition," which was a metal screw that protruded from the sidewalk, causing a tripping hazard. This is a significant victory for our client in that the First Department will rarely find that a defect is "trivial" as a matter of law, usually finding that such a determination is better left for a jury (as evidenced by the extensive dissenting opinion by one of the Appellate Division Justices). The case was litigated from the outset and argued at the Appellate Division by Kevin J. O'Donnell of the New York and New Jersey offices of Kaufman Dolowich & Voluck, LLP under the supervision of New Jersey managing partner Gino A. Zonghetti.

To read the Court's full decision, [click here](#).

Gloria L. Ramirez v. Lucille Roberts Health Club, Inc., __Ad.3d__, NY Slip Op 06846 (2nd Dept. 2013),

In a unanimous decision, the Appellate Division, Second Department, upheld the dismissal of plaintiff's case on summary judgment upon the doctrine of primary assumption of the risk. Kaufman Dolowich & Voluck attorneys Kenneth B. Danielsen and Kevin J. O'Donnell have, over the last several years, aggressively implemented this defense on behalf of several fitness center clients with excellent results. In this case, plaintiff allegedly fell and suffered a serious tear of her anterior cruciate ligament (ACL) (which required surgical repair), while participating in a step aerobics class. It was claimed by plaintiff and her retained expert engineer that the stepper was "defective" because it had moved about slightly during use on prior occasions and on the date of the accident, the stepper shifted even more, causing plaintiff to fall. Kenneth B. Danielsen of the New York and New Jersey offices of Kaufman Dolowich & Voluck, supervised by Gino A. Zonghetti, managing partner of the New Jersey office, argued from the outset that plaintiff's knowledge of the possibility of movement of the stepper and her experience and knowledge of the possible dangers associated with aerobic exercise required dismissal of the case.

No offer of settlement was made and the case was dismissed on summary judgment by the Supreme Court, County of Kings. Plaintiff appealed to the Appellate Division, Second Department, where Mr. Daniels successfully argued that the Court below had correctly applied the doctrine of primary assumption of the risk in dismissing the case.

To read the Court's full decision, [click here](#).