Disp ____ Dec __x__ Seq. # __3__ Type _reargue_

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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DOMENICO PRIORE and JOSEPHINE PRIORE, Index No. 63190/2018

Plaintiffs,

DECISION AND ORDER

-against-

33 TERRACE PLACE REALTY, LLC,

Defendant.

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The following papers numbered 1 to 4 were read on this motion:

Paper	Number
Notice of Motion, Affirmation and Exhibits	1
Memorandum of Law	2
Affirmation in Opposition	3
Memorandum of Law in Reply	4

Plaintiffs bring their motion to reargue this Court's December 7, 2020 Decision and Order (the "Decision") "to the extent that it denied their motion for summary judgment on Plaintiffs' Labor Law §§ 240(1) claim, and to the extent that it granted summary judgment to Defendant, 33 TERRACE PLACE REALTY, LLC, dismissing Plaintiffs' Labor Law § 240(1) claim."

In the Decision, the Court held that "In this case, the object that fell, causing plaintiff to fall off the deck to the ground, was a tree branch. There is no evidence to show that if the tree branch had not fallen, plaintiff would still have been

in danger, simply because he was working at an elevation. The Second Department has explained that 'An object needs to be secured if the nature of the work performed at the time of the accident posed a significant risk that the object would fall. However, here, it was not the nature of the work that caused an object to fall on the plaintiff. Rather, it was allegedly the defective condition of the ropes in the shaft. Where a falling object is not a foreseeable risk inherent in the work, no protective device pursuant to Labor Law § 240(1) is required.' *McLean v. 405 Webster Ave. Assocs.*, 98 A.D.3d 1090, 1095-96, 951 N.Y.S.2d 185, 191 (2d Dept. 2012). In this case, the snapping of the tree branch was not a foreseeable risk inherent in the work of an electrician."

The Court further explained that the "case of *Seales v. Trident Structural Corp.*, 142 A.D.3d 1153, 1156, 38 N.Y.S.3d 49, 53-54 (2d Dept. 2016), is instructional. In that action, the Second Department held that 'the plaintiff must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking. For section 240(1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute. However, Labor Law § 240(1) does not apply in

situations in which a hoisting or securing device of the type enumerated in the statute would not be necessary or expected.' That is precisely the case here; no securing or hoisting device for the tree branch would have been expected, or would have helped in this situation. The claims arising under Labor Law § 240(1) are dismissed."

It is well-settled that "A motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion. The motion does not offer an unsuccessful party, as here, successive opportunities to present arguments not previously advanced." *Pryor v. Commonwealth Land Title Ins. Co.*, 17 A.D.3d 434, 435-36, h793 N.Y.S.2d 452, 454 (2d Dept. 2005). *See also Ahmed v. Pannone*, 116 A.D.3d 802, 805, 984 N.Y.S.2d 104, 107 (2d Dept. 2014) ("While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.").

"Here, the court did not overlook or misapprehend the [movant's] arguments," *Vaughn v. Veolia Transp., Inc.*, 117 A.D.3d

939, 940, 986 N.Y.S.2d 504, 505 (2d Dept. 2014), and,

accordingly, the motion to reargue is denied.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
April 30, 2021

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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