MondayMonday

Labor Law 240(1) Made Easy

March 3, 2014

There are times when all this parenting is worthwhile; times when your child scores their first soccer goal; times when they shine at a bar mitzvah or a sweet sixteen; times when they graduate or when you can see the adult to come through the child that is. But how often does one get to see the circle; the place in the continuum where you end and they begin, sharing only the time in which you both travel the circle together?

We were at the Second Department last week, a place where we've spent a good portion of our legal life. This time, however, we were civilians, with no client to represent and no cause to champion. The First Daughter was being admitted as an Attorney and Counselor (one "L" in New York) at Law. She was going to sign the big, hard-cover book of attorneys, just the same way her grandfather, and her mother, and her father had done before her. Gently treated by Aprilanne Agostino, the wonderful Clerk of the Court, and her court officers, we were able to see the First Daughter as she actually put pen to paper. Such a small gesture. Yet, with that gesture and the oath that accompanied it, she stepped into

the circle. Now, we know we can't return to where we stepped on; we can only look behind from where we came; but we know that in her journey she is in the very good company of family, friends and colleagues, her fellow lawyers, who will take that trip with her and make it extraordinarily worthwhile.

There's nothing really hard about this Labor Law thing, is there? The statute is so damned clear. So, what's the problem? Witness the case of *Cioffi v. Target Corp.*, 2014 NY Slip Op 01290 (2d Dep't 2/26/14). Plaintiff, employed by a third-party contractor, was working on renovations at a Target store on Long Island, using a scissor lift to install a new paging system in the stockroom. Plaintiff finished his work and removed the lift from the stock room when he realized he had left his tool pouch hanging from a pipe above the stockroom floor. Rather than take the lift back out, a 40 minute affair, plaintiff used a ladder to get the pouch. The ladder "kicked out" or "buckled" and plaintiff was injured in the fall. Defendants moved for summary judgment on the 240(1) claim, which was eventually granted.

But this is easy, remember? So in reversing Supreme Court and reinstating the complaint, the Second Dep't reminds us that a plaintiff's own negligence will only relieve a defendant of liability under 240(1) where that negligence was the sole cause of the injury. In this case, plaintiff had the choice of using the lift or the ladder in his discretion, depending on the height of the work, "and the ladder was high enough for him to retrieve his tool pouch." One could not say, as a matter of law, that plaintiff was negligent in choosing one over the other.

Well, you self-doubters might say, wasn't plaintiff a recalcitrant worker, failing to use the safer device rather than the ladder? Nay, nay. The burden was defendants' and "they failed to eliminate all issues of fact, inter alia, as to whether the injured plaintiff knew that he was expected to use the lift or a (specific ladder), and not the ladder inside the stockroom, and whether the injured plaintiff had a good reason for using the ladder from which he fell."

We told you this was easy, didn't we? Oh, and in case you're being clever, those same principles bar summary judgment for plaintiff as well: "[T]riable issues of fact."