MondayMonday

No Ladder If You Can See It

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Some parts of life are like a scream within a nightmare; no one hears or heeds the danger we think we see. A few weeks ago we were down in Nashville for the graduation of our youngest daughter. It was a gloriously sunny day out on Alumni Lawn and The Rose looked lovely among the blooming magnolias. As we watched the young graduates take the podium to receive their dipomas, we wanted to shout. "You're being fooled. There are no jobs out there. Your degrees are worthless. You're are going to have to live in your childhood bedroom for years! Beware! Don't go!" Our warnings, however, would have fallen on deaf ears. These students were like the victims in a horror movie. They were going to open that cellar door anyway. We adults sat in the audience, lulled into believing that maybe this time, the heroine would be saved from the zombies that populate life in the real world.

Of course, they will. We are just old and no longer believe. But they

do. They believe in themselves (haven't we told them they are wonderful?) and possess that one essential element that we lost long ago —- a stubborn belief in tomorrow. They aren't stupid. They know it will be tough, but that's not what life is really about. It's about living and they are certainly ready to do that. "No bird soars in a calm," said Wilbur Wright. We say: Conquer and Prevail.

Doto v. Astoria Energy II, LLC, 2015 NY Slip Op 04605 (2d Dep't 6/3/15) involves one of the reoccurring reasons for why the Labor Law exists in the first instance. A boss who turns to his laborer, describes a gravity-related task and then walks away, blithely ignoring the danger of the job and the safety devices which would have protected the worker from injury.

Here, Victor Doto was assigned to work on permanent platform 3-4 stories above the ground. The problem? He was never told how to get up there. The only route Doto could see was to climb up a scaffolding ladder near the platform, step across a narrow board onto a gate and then climb over a railing to the platform. In doing so, Doto fell from the railing to the platform below, injuring himself. There were ladders somewhere, but Doto had never been told about them, and while Doto also had a safety lanyard, it was 6 feet long and Doto's fall from the rail was only 3 1/2 feet.

Without dismissing the court's fine discussion as to 241(6) liability and pleading, we note here its reminder that just because Doto fell only 3 1/2 feet did not diminish liability under the Labor Law. All that was necessary was that plaintiff establish a 240(1) violation, couple it with a failure to provide an adequate safety device and demonstrate that such failure was a proximate cause of his injuries. To have other safety devices somewhere on the site, without any evidence that plaintiff was instructed to use them, is meaningless for Labor Law purposes.

If you tuck one Labor Law case in your First Aid kit, this may very well be the one to take along with you.