

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 33
Michael Somereve, et al.,
Respondents,
v.
Plaza Construction Corp.,
Appellant.

Howard K. Fishman, for appellant.
Brian J. Isaac, for respondents.

MEMORANDUM:

The order of the Appellate Division should be reversed, with costs, plaintiffs' motion for partial summary judgment of liability on the Labor Law § 240 (1) claim denied, and the certified question answered in the negative.

Here, where there is insufficient evidence concerning how the accident occurred, the requested discovery could aid in establishing what happened, and the note of issue was not due to be filed for another six months, summary judgment was prematurely granted (see Groves v Land's End Hous. Co., 80 NY2d 978, 980 [1992]).

* * * * *

Order reversed, with costs, plaintiffs' motion for partial summary judgment of liability on the Labor Law § 240(1) claim denied, and certified question answered in the negative, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

Decided April 3, 2018