

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 09-01073

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, AND SCONIERS, JJ.

CAESAR TRONOLONE AND KIMBERLY TRONOLONE,
CLAIMANTS-APPELLANTS,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
DEFENDANT-RESPONDENT.
(CLAIM NO. 111315.)

CANTOR, LUKASIK, DOLCE & PANEPINTO, P.C., BUFFALO (STEPHEN C. HALPERN
OF COUNSEL), FOR CLAIMANTS-APPELLANTS.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, BUFFALO (R. ANTHONY
RUPP, III, OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Court of Claims (Jeremiah J. Moriarty, III, J.), entered February 23, 2009. The order granted the motion of defendant for summary judgment dismissing the claim.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Claimants commenced this Labor Law and common-law negligence action seeking damages for injuries sustained by Caesar Tronolone (claimant) when he slipped on a piece of scrap plywood that had been placed underneath a temporary road sign. The Court of Claims properly granted that part of defendant's motion for summary judgment dismissing the Labor Law § 241 (6) cause of action insofar as it is based on the alleged violation of 12 NYCRR 23-1.7 (d). We note that the remaining causes of action were withdrawn prior to the court's determination. Although 12 NYCRR 23-1.7 (d) is sufficiently specific to support a Labor Law § 241 (6) cause of action (*see Scarupa v Lockport Energy Assoc.*, 245 AD2d 1038), we nevertheless conclude that the piece of plywood on which claimant slipped "is not . . . the sort of [floor,] passageway, walkway, [scaffold, platform or other elevated] working area contemplated by 12 NYCRR 23-1.7(d)" (*Barnes v DeFoe/Halmer*, 271 AD2d 387, 388).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court