

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

1265

CA 10-01186

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, LINDLEY, AND GREEN, JJ.

WAYNE A. BOIVIN, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

THE MARRANO/MARC EQUITY CORP.,
DEFENDANT-APPELLANT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (WENDY A. SCOTT OF COUNSEL),
FOR DEFENDANT-APPELLANT.

CELLINO & BARNES, P.C., BUFFALO (GREGORY V. PAJAK OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Tracey A. Bannister, J.), entered September 23, 2009 in a personal injury action. The order, insofar as appealed from, granted the motion of plaintiff for leave to amend the complaint nunc pro tunc.

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

Memorandum: Plaintiff commenced this Labor Law and common-law negligence action seeking damages for injuries he sustained while installing a roof on a home that was under construction. Supreme Court properly granted plaintiff's motion seeking leave to amend the complaint with respect to the alleged location of the accident. "The proposed amendment, based upon information that came to light during discovery, will not prejudice defendant[] . . . , and it is not plainly lacking in merit" (*Haga v Pyke*, 19 AD3d 1053, 1055; see *Hernandez v City of Yonkers*, 74 AD3d 1025, 1026-1027; *Haggerty v Everett Realty*, 21 AD3d 268).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court