

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

897

CA 11-01726

PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

SHAWN PALMER, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

COUNTY OF ERIE, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, BUFFALO (ERIC S. BERNHARDT OF COUNSEL), FOR DEFENDANT-APPELLANT.

MAXWELL MURPHY, LLC, BUFFALO (ALAN D. VOOS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Tracey A. Bannister, J.), entered May 9, 2011. The order denied that part of plaintiff's motion seeking leave to renew and granted that part of plaintiff's motion seeking partial summary judgment on liability pursuant to Labor Law § 240 (1).

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, plaintiff's motion insofar as it seeks leave to renew is granted, that part of the underlying motion seeking summary judgment dismissing the Labor Law § 240 (1) claim against defendant is denied, that claim is reinstated and plaintiff's motion insofar as it seeks partial summary judgment on that claim is denied.

Same Memorandum as in *Palmer v County of Erie* ([appeal No. 1] ____ AD3d ____ [Oct. 5, 2012]).

Entered: October 5, 2012

Frances E. Cafarell
Clerk of the Court