

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Renwick, P.J., Kapnick, Shulman, Rosado, O'Neill Levy, JJ.

2084

STEPHEN CLARKE,
Plaintiff-Appellant,

Index No. 158033/18
Case No. 2023-02557

-against-

CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,
Defendant-Respondent.

Mischel & Horn, P.C., New York (Ross Salvatore Friscia of counsel), for appellant.

Traub Lieberman Straus & Shrewsbury LLP, Hawthorne (Nicole Verzillo of counsel),
for respondent.

Order, Supreme Court, New York County (Sabrina Kraus, J.), entered May 17, 2023, which, to the extent appealed from as limited by the briefs, granted defendant's motion for summary judgment dismissing plaintiff's Labor Law §§ 240(1) and 241(6) claims, unanimously reversed, on the law, without costs, and the motion denied.

Plaintiff sustained personal injuries when he fell into an open manhole while he was performing work for his employer, which contracted with defendant to perform underground inspections and repairs of network distribution equipment. The language of the contract between defendant and plaintiff's employer, as well as the testimony of plaintiff and defendant's representative, raised an issue of fact as to whether plaintiff was engaged in protected work activity under the Labor Law at the time of his accident (*see Dos Santos v Consolidated Edison of N.Y., Inc.*, 104 AD3d 606, 607 [1st Dept 2013]; *Piccione v 1165 Park Ave.*, 258 AD2d 357, 358 [1st Dept 1999], *lv dismissed* 93

NY2d 957 [1999]).

Contrary to the court's determination, an open manhole is an elevation-related risk that Labor Law § 240(1) is intended to protect against (*see Piccone v Metropolitan Tr. Auth.*, 205 AD3d 628, 628-629 [1st Dept 2022]; *Dos Santos*, 104 AD3d at 608).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 18, 2024

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being the most prominent.

Susanna Molina Rojas
Clerk of the Court