

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

875

CA 17-00150

PRESENT: CARNI, J.P., CURRAN, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

STEPHEN J. JONES AND LAURIE KLEHR-JONES,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

JAY P. TOVEY CO., INC., DEFENDANT-APPELLANT.

JAY P. TOVEY CO., INC., THIRD-PARTY PLAINTIFF,

V

STEPHEN J. JONES CONTRACTING, INC., MELISSA
RICE, KENNETH RICE AND OXFORD EAST LANDSCAPE
AND DESIGN, INC., THIRD-PARTY DEFENDANTS.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM LLC, ROCHESTER (MATTHEW A. LENHARD
OF COUNSEL), FOR DEFENDANT-APPELLANT AND THIRD-PARTY PLAINTIFF.

FITZSIMMONS, NUNN & PLUKAS, LLP, ROCHESTER (JASON E. ABBOTT OF
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Ann Marie Taddeo, J.), entered September 13, 2016. The order granted plaintiffs' cross motion for partial summary judgment on the issue of defendant-third-party plaintiff's liability under Labor Law § 240 (1).

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the cross motion is denied without prejudice.

Memorandum: Stephen J. Jones (plaintiff), an employee and owner of third-party defendant Stephen J. Jones Contracting, Inc., fell from a ladder while working on a single-family home. Plaintiff and his wife thereafter commenced this Labor Law and common-law negligence action against, inter alia, defendant-third-party plaintiff Jay P. Tovey Co., Inc. (defendant), the general contractor on the project. Insofar as relevant to this appeal, plaintiffs cross-moved for partial summary judgment on the issue of defendant's liability under Labor Law § 240 (1). We agree with defendant that, in view of the limited discovery that has been conducted, Supreme Court erred in granting the cross motion (*see Coniber v Center Point Transfer Sta., Inc.*, 82 AD3d 1629, 1629). Notably, discovery has been limited to plaintiff's own account of the accident during his examination before trial, and defendant has not had an opportunity to explore potential defenses

(see generally *Groves v Land's End Hous. Co., Inc.*, 80 NY2d 978, 980).

Entered: June 16, 2017

Frances E. Cafarell
Clerk of the Court