

PICK THE DECISION I

Plaintiff Lindsay Cotton was provided with an A-frame ladder which “could not be opened or locked while plaintiff was performing his task, and the only way plaintiff could gain access to his work area on the ceiling at the end of the room was by folding up the ladder and leaning it against the wall.” The ladder was not anchored to the floor or wall. While plaintiff was astride the ladder, performing his work, his hand came into contact with a live wire. The shock caused him to lose his balance and fall.

Plaintiff’s expert opined in an affidavit that had the ladder been supported or secured to the floor or wall by anchoring, it would have remained stable when plaintiff was shocked. He further stated that, given the nature of plaintiff’s work, which involved cutting pipes and the use of hand tools at an elevated height, plaintiff should have been furnished with a more stable device, such as a Baker scaffold or a man lift.

Plaintiff moves for summary judgment, arguing that the injuries he sustained in falling were caused by a violation of Labor Law § 240. Defendant cross-moves for dismissal of the plaintiff’s Labor Law § 240 cause of action, arguing that the accident was caused by an electrical shock, not by any elevation-related hazard.

The correct ruling is,

1) **The defendant’s cross-motion to dismiss should be granted** because “the fact that the accident may have been tangentially related to gravity” does not bring the accident within the statute’s scope where, as here, it was “plainly caused by an electrical hazard that was not part of the risks to which the statute was aimed,” and, indeed, “[e]lectrical jolts have been known to thrust a person across a distance, opened ladder or not.”

(2) **Plaintiff’s motion should be granted inasmuch as,**

a) the unsecured and unsupported A-frame ladder was as a matter of law “inadequate to perform the assigned task,”

b) “[t]he fact that the fall was precipitated by an electric shock” does not mean that the inadequacy of the elevation device was not also a proximate cause of the plaintiff’s fall, and the Court of Appeals ruling in *Nazario v. 222 Broadway, LLC*, 28 NY3d 1054 [2016] “never suggested that all elevated falls following electrical shocks were carved out of the protections of the statute,” and,

c) the proof mandated the conclusion that the ladder’s inadequacy was a proximate cause of plaintiff’s fall.

(3) **Both motions should be denied.** “When an electrical shock causes a worker to fall from an A-frame ladder in the absence of evidence that the ladder was defective or that another safety device was required, factual issues pertaining to causation and liability are presented for trial, precluding strict liability favoring the plaintiff.”