

PICK THE DECISION II

Plaintiff, who was assigned to remove snow and ice from the roof of a commercial building owned by defendant, fell from the bucket of a backhoe that was being used to lift him up to the roof. Upon striking the ground, plaintiff was then struck by the backhoe.

Plaintiff moves for summary judgment under Labor Law § 240, claiming that removal of snow and ice was “cleaning” within the meaning of the statute. Defendant cross-moves on multiple grounds for dismissal of the plaintiff’s Labor Law § 240 cause of action.

The correct ruling is,

- (1) **Defendant’s cross-motion to dismiss should be granted** because removal of snow and ice in a non-construction setting is neither “cleaning” nor any other activity protected by Labor Law § 240.
- (2) **Defendant’s cross-motion to dismiss should be granted** because the accident occurred “before plaintiff had even started to perform the so-called ‘cleaning.’”
- (3) **Plaintiff’s motion should be granted** because “the removal of snow and ice from the roof of a commercial building, under these circumstances, constitutes a form of ‘cleaning,’ thereby bringing it within the ambit of Labor Law § 240(1)” and because plaintiff was not provided any protection to protect him from the subject fall.
- (4) **Both motions should be denied** because it is for a jury to say whether the subject activity was “cleaning,” and, if so, whether the accident “was proximately caused by a violation of the statute.”