

8 N.Y.3d 961

(Cite as: 8 N.Y.3d 961, 868 N.E.2d 186)

H

Pavlou v. City of New York
8 N.Y.3d 961, 836 N.Y.S.2d 506
NY,2007.

8 N.Y.3d 961868 N.E.2d 186, 836 N.Y.S.2d 506,
2007 WL 1294721, 2007 N.Y. Slip Op. 03796

Nick Pavlou et al., Appellants
v

City of New York, Respondent, et al., Defendant
and Third-Party Plaintiff. Felix Industries, Inc.,
Third-Party Defendant-Respondent. (And Another
Action.)

Court of Appeals of New York

Decided May 3, 2007

CITE TITLE AS: Pavlou v City of New York

SUMMARY

Appeal, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from an order of that Court, entered June 23, 2005. The Appellate Division, with two Justices dissenting, (1) reversed, on the law, an order of the Supreme Court, New York County (Jane Solomon, J.), which had granted plaintiffs' motion pursuant to [CPLR 4404](#) (a) for a new trial on defendant City's statutory liability under [Labor Law § 241 \(6\)](#), (2) denied plaintiffs' motion, (3) reinstated that part of the jury verdict and (4) remanded for further proceedings. The following question was certified by the Appellate Division: "Was the order of this Court, which reversed the order of Supreme Court, properly made?"

[Pavlou v City of New York](#), 21 AD3d 74, affirmed.

HEADNOTE

Labor
Safe Place to Work

In a personal injury action arising from the collapse

of a crane on a construction site, wherein the jury found that the proximate cause of the injury was a preexisting crack in the crane, which made it unsafe to operate the crane with any load, not the negligent operation of the crane with an excess load in violation of the Industrial Code, the Appellate Division properly reversed Supreme Court's order granting plaintiff a new trial on defendant City's statutory liability under the Labor Law. The jury's finding that the collapse was caused by the defective crane and not the load size was supported by record evidence. Based on the proof, issues of negligence and causation were not inextricably interwoven and the jury verdict, which did not apportion any liability to defendant City, was not inconsistent. Since the Appellate Division did not abuse its discretion, further consideration was beyond the Court of Appeals review power. In this procedural context, the Court of Appeals could not review a prior nonfinal Appellate Division order dismissing another Labor Law cause of action.

APPEARANCES OF COUNSEL

Hancock & Estabrook, Syracuse (*Alan J. Pierce* of counsel), for appellants.

Quirk and Bakalor, P.C., New York City (*Timothy J. Keane* of counsel), for respondent.

Lester Schwab Katz & Dwyer, LLP, New York City (*John Sandercock* of counsel), for Felix Industries, Inc., third-party defendant-respondent.

Callan, Koster, Brady & Brennan, LLP, Uniondale (*Michael P. Kandler* of counsel), for Hampton C.F. Corp., third-party defendant-respondent.

OPINION OF THE COURT

Memorandum.

The order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

In this personal injury case arising from the collapse of a crane on a construction site, the jury

8 N.Y.3d 961

(Cite as: 8 N.Y.3d 961, 868 N.E.2d 186)

found that the operation of the crane with an excess load, in violation of Industrial Code (12 NYCRR) § 23-8.2 (g) (2) (iii), amounted to negligence but that this was not a proximate **2 cause of the injury suffered by plaintiff. Experts testified at trial that the crane had a preexisting crack that made it unsafe to operate with any load. The *963 jury's finding that the collapse was caused by the defect in the crane, and not the size of the load, was therefore supported by record evidence. Based on the proof, issues of negligence and causation were not inextricably interwoven in this case and the jury verdict, which did not apportion any liability to the City of New York, was not inconsistent (*cf. Marine Midland Bank v Russo Produce Co.*, 50 NY2d 31, 41 [1980]). Because the Appellate Division did not abuse its discretion when it reversed Supreme Court's order granting a new trial, further consideration of plaintiffs' arguments is beyond our review power (*see Levo v Greenwald*, 66 NY2d 962, 963 [1985]). Finally, in this procedural context, this Court may not review the December 2002 nonfinal Appellate Division order (300 AD2d 120 [2002]) on this appeal from the June 2005 order (*see Weinberg v Hertz Corp.*, 69 NY2d 979, 981 [1987]; CPLR 5713, 5501 [a] [1]).

Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur in memorandum.

On review of submissions pursuant to section 500.11 of the Rules of the Court of Appeals (22 NYCRR 500.11), order affirmed, etc.

Copr. (c) 2010, Secretary of State, State of New
York

NY,2007.

Pavlou v City of New York

8 N.Y.3d 961

END OF DOCUMENT

KEYCITE

H **Pavlou v. City of New York**, 8 N.Y.3d 961, 868 N.E.2d 186, 836 N.Y.S.2d 506, 2007 N.Y. Slip Op. 03796 (N.Y., May 03, 2007) (NO. 1, 108 SSM 9)

History

Direct History

- H** 1 Pavlou v. City of New York, 21 A.D.3d 74, 797 N.Y.S.2d 478, 2005 N.Y. Slip Op. 05419 (N.Y.A.D. 1 Dept. Jun 23, 2005) (NO. 4605, 4606)
Leave to Appeal Dismissed by
- H** 2 Pavlou v. City of New York, 5 N.Y.3d 878, 842 N.E.2d 24, 808 N.Y.S.2d 138 (N.Y. Nov 22, 2005) (NO. 1127 SSD 61)
AND Order Affirmed by
- => 3 **Pavlou v. City of New York**, 8 N.Y.3d 961, 868 N.E.2d 186, 836 N.Y.S.2d 506, 2007 N.Y. Slip Op. 03796 (N.Y. May 03, 2007) (NO. 1, 108 SSM 9)

Related References

- H** 4 Pavlon v. The City of New York, 2001 WL 36107678 (Trial Order) (N.Y.Sup. Sep 24, 2001) (NO. 101447/97, 59041/97, 591634/98)
- H** 5 Pavlou v. City of New York, 300 A.D.2d 120, 752 N.Y.S.2d 619, 2002 N.Y. Slip Op. 09345 (N.Y.A.D. 1 Dept. Dec 17, 2002) (NO. 1715, 1716, 1717)

Court Documents

Appellate Court Documents (U.S.A.)

N.Y. Appellate Briefs

- 6 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Appellants/Cross-Respondents, v. THE CITY OF NEW YORK, Defendant-Respondent/Cross-Appellant, Simon Ro Corporation, Defendant, Simon-Ro Corporation, Third-Party Plaintiff, v. Felix Industries, Third-Party Defendant/Cross-Respondent, The City of New York, Se, 2007 WL 6117763 (Appellate Brief) (N.Y. 2007) **Brief of Plaintiffs-Appellants/Cross-Respondents** (NO. 108)
- 7 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Appellants/Cross-Respondents, v. THE CITY OF NEW YORK, Defendant-Respondent/Cross-Appellant, Simon Ro Corporation, Defendant. Simon-Ro Corporation, Third-Party Plaintiff, v. Felix Industries, Third-Party Defendant/Cross-Respondent. The City of New York, Se, 2007 WL 6117768 (Appellate Brief) (N.Y. 2007) **Brief of Plaintiffs-Appellants/Cross-Respondents, in Response to Cross-Appellant and in Reply to Defendant-Respondent** (NO. 108)

- 8 PAVLOU, v. CITY OF NEW YORK, et al., 2007 WL 6117770 (Appellate Brief) (N.Y. Jan. 18, 2007) **Letter Brief** (NO. 108)
- 9 PAVLOU, v. THE CITY OF NEW YORK, et al., 2007 WL 6117771 (Appellate Brief) (N.Y. Feb. 27, 2007) **Letter Brief** (NO. 108)
- 10 PAVLOU, v. CITY OF NEW YORK, et al. Simon-Ro Corporation, Third-Party Plaintiff, v. Felix Industries, Inc., Third-Party Defendant/Respondent. The City of New York, Second Third-Party Plaintiff-Respondent, v. Hampton C. F. Corp., Second Third-Party Defendant/Respondent., 2007 WL 6117773 (Appellate Brief) (N.Y. Feb. 28, 2007) **Letter Brief** (NO. 108)

N.Y.A.D. 1 Dept. Appellate Briefs

- 11 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Respondents, v. THE CITY OF NEW YORK, Defendant-Appellant, SIMON-RO CORPORATION, Defendant. SIMON-RO CORPORATION, Third-Party Plaintiff, v. FELIX INDUSTRIES, Third-Party Defendant-Appellant. THE CITY OF NEW YORK, Second Third-Party Plaintiff, v. HAMPTON C., 2004 WL 5360167 (Appellate Brief) (N.Y.A.D. 1 Dept. Mar. 22, 2004) **Defendant-Appellant the City of New York's Brief** (NO. 4605)
- 12 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Respondents, v. THE CITY OF NEW YORK, Defendant-Appellant, Simon-Ro Corporation, Defendant. Simon-Ro Corporation, Third-Party Plaintiff, v. Felix Industries, Inc., Third-Party Defendant-Appellant. The City of New York, Second Third-Party Plaintiff, v. Hamp, 2004 WL 5394161 (Appellate Brief) (N.Y.A.D. 1 Dept. Mar. 22, 2004) **Brief for Third-Party Defendant-Appellant** (NO. 4605)
- 13 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Respondents/Cross-Appellants, v. THE CITY OF NEW YORK, Defendant-Appellant/Cross-Respondent, SIMON-RO CORPORATION, Defendant. SIMON-RO CORPORATION, Third-Party Plaintiff, v. FELIX INDUSTRIES, INC., Third-Party Defendant-Appellant/Cross-Respondent. THE CITY, 2004 WL 5360169 (Appellate Brief) (N.Y.A.D. 1 Dept. Jul. 1, 2004) **Defendant-Appellant/Cross-Respondent The City of New York's Brief** (NO. 4605)
- 14 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Respondents/Cross-Appellants, v. THE CITY OF NEW YORK, Defendant-Appellant/Cross-Respondent, SIMON-RO CORPORATION, Defendant. SIMON-RO CORPORATION, Third-Party Plaintiff, v. FELIX INDUSTRIES, INC., Third-Party Defendant-Appellant/Cross-Respondent. THE CITY, 2004 WL 5360170 (Appellate Brief) (N.Y.A.D. 1 Dept. Sep. 3, 2004) **Brief for Plaintiffs-Respondents/Cross-Appellants** (NO. 4605)
- 15 Nick PAVLOU and Vassoula Pavlou, Plaintiffs-Respondents, v. THE CITY OF NEW YORK, Defendant-Appellant, Simon-Ro Corporation, Defendant. Simon-Ro Corporation, Third-Party Plaintiff, v. Felix Industries, Inc., Third-Party Defendant-Appellant. The City of New York, Second Third-Party Plaintiff, v. Hamp, 2004 WL 5394162 (Appellate Brief) (N.Y.A.D. 1 Dept. Sep. 16, 2004) **Reply Brief of Third-Party Defendant Appellant Felix Industries** (NO. 4605)
- 16 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Respondents/Cross-Appellants, v. THE CITY OF NEW YORK, Defendant-Appellant/Cross-Respondent, SIMON-RO CORPORATION, Defendant. SIMON-RO CORPORATION, Third-Party Plaintiff, v. FELIX INDUSTRIES, INC., Third-Party Defendant-Appellant/Cross-Respondent. THE CITY, 2004 WL 5360171 (Appellate Brief) (N.Y.A.D. 1 Dept. Sep. 17, 2004) **Defendant-Appellant/Cross-Respondent the City of New**

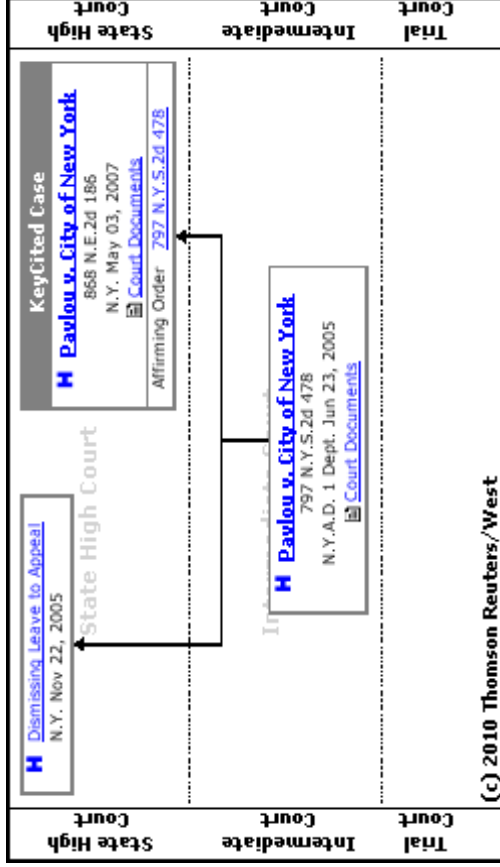
York's Reply Brief (NO. 4605)

- 17 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Respondents/Cross-Appellants, v. THE CITY OF NEW YORK, Defendant-Appellant/Cross-Respondent, SIMON-RO CORPORATION, Defendant. SIMON-RO CORPORATION, Third-Party Plaintiff, v. FELIX INDUSTRIES, INC., Third-Party Defendant-Appellant/Cross-Respondent. THE CITY, 2004 WL 5360168 (Appellate Brief) (N.Y.A.D. 1 Dept. Sep. 23, 2004) **Plaintiffs-Respondents/Cross-Appellants Reply to Cross-Respondents' Briefs (NO. 4605)**

Date of Printing: Feb 01, 2010

KEYCITE

■ Pavlou v. City of New York, 8 N.Y.3d 961, 868 N.E.2d 186, 836 N.Y.S.2d 506, 2007 N.Y. Slip Op. 03796 (N.Y., May 03, 2007) (NO. 1, 108 SSM 9)



(c) 2010 Thomson Reuters/West

KEYCITE

H Pavlou v. City of New York, 8 N.Y.3d 961, 868 N.E.2d 186, 836 N.Y.S.2d 506, 2007 N.Y. Slip Op. 03796 (N.Y. May 03, 2007) (NO. 1, 108 SSM 9)

Citing References

Secondary Sources (U.S.A.)

- 1 American Law of Products Liability 3d s 112:93, Cranes (2009) **HN: 1 (N.Y.S.2d)**
- 2 New York Pattern Jury Instructions--Civil NOTE 1 (2010) **HN: 1 (N.Y.S.2d)**
- 3 NY Jur. 2d Agency & Independent Contractors s 453, Liability as based on negligence; defenses (2009) **HN: 1 (N.Y.S.2d)**
- 4 NY Jur. 2d Negligence s 181, Preponderance of the evidence standard--Proximate cause (2009)
- 5 NY Jur. 2d Premises Liability s 283, Liability or cause of action as based on violation of regulation promulgated pursuant to statute (2009)

Court Documents

Appellate Court Documents (U.S.A.)

Appellate Briefs

- 6 James CROOMS, Plaintiff-Appellant, v. SAUER BROS., INC., Defendant-Respondent., 2007 WL 5917603, *5917603 (Appellate Brief) (N.Y.A.D. 1 Dept. 2007) **Brief of Defendant-Respondent** (NO. 2907) ★