

300 A.D.2d 120

(Cite as: 300 A.D.2d 120, 752 N.Y.S.2d 619)

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Pavlou v. City of New York
300 A.D.2d 120, 752 N.Y.S.2d 619
N.Y.A.D.,2002.

300 A.D.2d 120752 N.Y.S.2d 619, 2002 WL
31819648, 2002 N.Y. Slip Op. 09345

Nick Pavlou et al., Appellants-Respondents,
v.

City of New York, Respondent-Appellant, et al.,
Defendant and Third-Party Plaintiff. Felix Indus-
tries, Third-Party Defendant-Respondent. (And An-
other Action.)

Supreme Court, Appellate Division, First Depart-
ment, New York

(December 17, 2002)

CITE TITLE AS: Pavlou v City of New York

Order, Supreme Court, New York County (Walter Tolub, J.), entered on or about April 17, 2001, which, inter alia, denied plaintiff's motion for partial summary judgment on the issue of defendant construction site owner's liability under [Labor Law § 240 \(1\)](#), granted the owner's motion for summary judgment insofar as addressed to plaintiff's [Labor Law § 240 \(1\)](#) and [§ 241 \(6\)](#) claims, and denied the owner's motion for summary judgment insofar as addressed to plaintiff's [Labor Law §§ 200 and 213](#) claims, plaintiff's wife's loss of consortium claim, and the owner's cross claim for indemnification against third-party defendant contractor, also plaintiff's employer, and order, same court and Justice, entered on or about September 24, 2001, which, inter alia, denied plaintiff's motion to renew, unanimously modified, on the law, to reinstate plaintiff's [Labor Law § 241 \(6\)](#) claim and dismiss his [Labor Law § 213](#) claim, and otherwise affirmed, without costs.

Plaintiff was moving a steel plate from one pile of steel plates at ground level to another such pile 10 feet away with the use of a boom crane affixed to

the back of a flatbed truck owned by his employer. At a point when the crane was extended 30 feet in the air, the boom suddenly broke off and fell on plaintiff. Plaintiff's [Labor Law § 240 \(1\)](#) claim was properly dismissed because this is not a case involving the use of a crane "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure" ([Labor Law § 240 \[1\]](#)).

Plaintiff's [section 241 \(6\)](#) cause of action should not have been dismissed since there are issues of fact as to: (1) whether the crane in question was provided with a capacity chart setting for the safe loads that could be hoisted ([*12112 NYCRR 23-8.2 \[g\] \[2\] \[i\]](#)); (2) whether the load plaintiff was attempting to lift at the time of the accident exceeded the maximum capacity specified by the crane's capacity chart ([12 NYCRR 23-8.2 \[g\] \[2\] \[iii\]](#)); and (3) whether these alleged violations were a proximate cause of plaintiff's injuries. Issues of fact bearing upon the owner's supervisory control over the work site and possible defects in the crane warrant retention of plaintiff's [section 200](#) claim against the owner (*see Freitas v New York City Tr. Auth.*, 249 AD2d 184, 187) and the owner's cross claims for indemnification against plaintiff's employer.

Plaintiff's claim under [Labor Law § 213](#), interposed in the bill of particulars, should have been dismissed. [Labor Law § 213](#) defines as a misdemeanor the violation of any provision of the Labor Law or any rule, regulation or lawful order of the Industrial Commissioner. A private cause of action may be implied from a statute if we determine "that the remedy is appropriate in furtherance of the purpose of the provision and needed to assure its effectiveness" (*Brown v State of New York*, 89 NY2d 172, 187). Given the availability of civil remedies in article 10 of the Labor Law for the conduct alleged by plaintiff, an implied private cause of action under [section 213](#) would be neither appropriate nor necessary (*cf. Walck Bros. AG. Serv. v Suburban Pipeline Co.*, 259 AD2d 1004, 1005 [no implied

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cause of action for alleged violations of Labor Law article 8]; *Gain v Eastern Reinforcing Serv.*, 193 AD2d 255, 257 [no implied cause of action for alleged violations of Labor Law article 7]).

We have considered the parties' other arguments for affirmative relief and find them unavailing.

Concur--Nardelli, J.P., Buckley, Ellerin, Rubin and Friedman, JJ.

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N.Y.A.D.,2002.

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KEYCITE

H **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)

History**Direct History**

=> **1** **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)

Related References

H **2** 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 **3** 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 **4** 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

H **5** 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)

Court Documents**Appellate Court Documents (U.S.A.)****N.Y.A.D. 1 Dept. 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, 2002 WL 34349749 (Appellate Brief) (N.Y.A.D. 1 Dept. 2002) **Brief of Plaintiffs-Appellants/Cross-Respondents** (NO. 1715)

7 Nick PAVLOU and Vasoulla Pavlou, Plaintiffs-Appellants/Cross respondents, v. THE CITY OF NEW YORK, Defendant-Respondent/Cross-Appellant, SIMON-RO CORPORATION, Defendant. S'MON-RO CORPORATION, Third-Party plaintiff, v. FELIX INDUSTRIES, INC., Third-Party Defendant/Cross-Respondent. THE CITY OF NEW YO, 2002 WL 34349750 (Appellate Brief) (N.Y.A.D. 1 Dept. 2002) **Brief of Third-Party Defendant/Cross-Respondent Felix In-**

dustries (NO. 1715)

8 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, 2002 WL 34349751 (Appellate Brief) (N.Y.A.D. 1 Dept. 2002) **Brief of Plaintiffs-Appellants/ Cross-Respondents** (NO. 1715)

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Westlaw has no direct history for this case

Intermediate Court

KeyCited Case

H [Paulou v. City of New York](#)

752 N.Y.S.2d 619

N.Y.A.D. 1 Dept. Dec 17, 2002

[Court Documents](#)

Trial
Court

Trial
Intermediate Court

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H **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)

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- C** 2 **Decker v. C & S Wholesale Grocers, Inc.**, 786 N.Y.S.2d 328, 329, 13 A.D.3d 573, 573, 2004 N.Y. Slip Op. 09592, 09592 (N.Y.A.D. 2 Dept. Dec 27, 2004) (NO. 2003-05013, 1482/02)
- ▶** 3 **Erkocaj v. Port Authority of New York and New Jersey**, 784 N.Y.S.2d 920, 920, 2 Misc.3d 1001(A), 1001(A), 2004 N.Y. Slip Op. 50067(U), 50067(U) (N.Y.Sup. Feb 18, 2004) (Table, text in WESTLAW, NO. 3141/98) **HN: 1 (N.Y.S.2d)**
- C** 4 **Bryant v. Carey**, 765 N.Y.S.2d 146, 149, 196 Misc.2d 412, 414, 2003 N.Y. Slip Op. 23628, 23628 (N.Y.City Civ.Ct. Mar 28, 2003) (NO. 46337 CVN 2002) **HN: 4 (N.Y.S.2d)**

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- 8 **APPELLATE DECISION SECOND DEPARTMENT Appellate Division**, 1/3/2005 N.Y. L.J. 38, col. 4, 38, col. 4 (2005)
- 9 **DECISION OF INTEREST Queens County Supreme Court Labor Law Claims by Airport Cargo Loader Who Fell While on Forklift Are Dismissed**, 3/2/2004 N.Y. L.J. 19, col. 1, 19, col. 1 (2004) **HN: 1 (N.Y.S.2d)**
- 10 **Civil Court DECISION OF INTEREST New York County**, 4/9/2003 N.Y. L.J. 22, col. 6, 22, col. 6 (2003)
- 11 **EMPLOYMENT LAW**, 55 Syracuse L. Rev. 919, 963 (2005) **HN: 5 (N.Y.S.2d)**

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Appellate Briefs

- 12 PAVLOU, v. THE CITY OF NEW YORK, et al., 2007 WL 6117771, *6117771+ (Appellate Brief) (N.Y. Feb 27, 2007) **Letter Brief** (NO. 108) ★ ★ **HN: 1 (N.Y.S.2d)**
- 13 PAVLOU, v. CITY OF NEW YORK, et al., 2007 WL 6117770, *6117770+ (Appellate Brief) (N.Y. Jan 18, 2007) **Letter Brief** (NO. 108) ★ ★
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- 16 Walter MOLLER and Patricia Moller, Plaintiffs-Respondents v. THE CITY OF NEW YORK, The American Museum of Natural History, Defendants-Appellants, v. NEW YORK CRANE & EQUIPMENT CORPORATION, Defendant-Respondent. NEW YORK CRANE & EQUIPMENT CORP. s/h/a New York Crane & Equipment Corporation, Third-Party Plaintiff-Respondent, v. WILLIAMS SPECIALIZED SERVICES, INC. and Williams Specialized, Inc., Third-Party Defendants-Respondents., 2007 WL 4977716, *4977716+ (Appellate Brief) (N.Y.A.D. 1 Dept. 2007) **Brief for Plaintiffs-Respondents** (NO. 1181) ★ ★ **HN: 1 (N.Y.S.2d)**
- 17 Yvonne MODESTE, as Administrator of the Estate of Joseph Edwards, Deceased, Plaintiff-Appellant, v. MEGA CONTRACTING, INC., Mark Bajor, and the New York City Housing Authority, Defendants-Respondents, THE CITY OF NEW YORK, Defendant, NEW YORK CITY HOUSING AUTHORITY, Third-Party Plaintiff-Respondent, v. CONSTRUCTIVE IDEAS & MASONRY DESIGN, INC., Third-Party Defendant-Respondent., 2006 WL 4583801, *4583801+ (Appellate Brief) (N.Y.A.D. 1 Dept. 2006) **Brief of Defendant/Third-Party Plaintiff Respondent New York City Housing Authority** (NO. 9977) ★ ★
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- 21 Richard SULLIVAN and Kelly Sullivan, Plaintiffs, v. GPH PARTNERS LLC and Bovis Lend Lease LMB, Inc., Defendants., 2006 WL 5537552, *5537552 (Trial Motion, Memorandum and Affidavit) (N.Y.Sup. Dec 05, 2006) **Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment** (NO. 109698/05) ★ ★ **HN: 1 (N.Y.S.2d)**
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