

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D16991  
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Argued - October 29, 2007

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

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2006-08843

DECISION & ORDER

Hiram Ruiz, et al., respondents, v WDF,  
Inc., et al., appellants.

(Index No. 2247/04)

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Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),  
for appellants.

Fortunato & Fortunato, PLLC (Pollack, Pollack, Isaac & De Cicco, New York, N.Y.  
[Brian J. Isaac and Michael H. Zhu] of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from  
an order of the Supreme Court, Nassau County (Feinman, J.), dated July 28, 2006, which granted the  
plaintiffs' motion for summary judgment on the issue of liability pursuant to Labor Law § 240(1).

ORDERED that the order is affirmed, with costs.

The plaintiff Hiram Ruiz (hereinafter the plaintiff), employed by a subcontractor on  
a project to upgrade the heating system in a public school, fell from an A-frame ladder while screwing  
clips into the wall of a classroom at a height of about 10 to 12 feet. The Supreme Court properly  
found that the plaintiffs made a prima facie showing of entitlement to judgment as a matter of law on  
the issue of liability under Labor Law § 240(1) with evidence that the A-frame ladder upon which the  
plaintiff was standing was improperly placed on a recently waxed floor at a distance of about 18  
inches from the wall due to a protruding radiator (*see Klein v City of New York*, 89 NY2d 833; *Peter  
v Nisseli Realty Co.*, 300 AD2d 289; *Izzo v AEW Capital Mgt.*, 288 AD2d 268). In opposition, the  
defendants failed to raise a triable issue of fact. Even if the plaintiff's leaning forward on the ladder

to reach his work could be deemed a misuse of the ladder, the misuse was occasioned by its improper placement, which was a proximate cause of the plaintiff's injuries (*see Izzo v AEW Capital Mgt.*, 288 AD2d at 269).

SPOLZINO, J.P., RITTER, COVELLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court