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This memorandum is uncorrected and subject to revision before publication in the New York Reports.
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1 No. 178 SSM 26

Tom Miro et al.,
Appellants,
v.
Plaza Construction Corp., et al.,
Respondents,
ABCO Peerless Fire Suppression Corp. et al.,
Defendants.
(And a Third-Party Action)

Submitted by Paul F. McAloon, for appellants.
Submitted by Laurel A. Wedinger, for respondents.

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On review of submissions pursuant to section 500.11 of the Rules, order modified, without costs, by denying summary judgment to defendants as to the Labor Law § 240(1) claim and, as so modified, affirmed, and certified question answered in the negative. Assuming that the ladder was unsafe, it is not clear from the record how easily a replacement ladder could have been procured. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 23, 2007