

Rivas v Coney Is. Site 1824 Houses, Inc.
2026 NY Slip Op 31088(U)
March 16, 2026
Supreme Court, Kings County
Docket Number: Index No. 520563/2019
Judge: Ingrid Joseph
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At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 16th day of March 2026.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

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RUBEN RIVAS,

Plaintiff,

-against-

Index No. 520563/2019

CONEY ISLAND SITE 1824 HOUSES, INC.,
GLARRETT HOLDING CORPORATION,
STARRETT CITY, INC., OCEANGATE L.P.,
STARRETT OCEANGATE, LLC AND
GRENADIER REALTY CORP.,

DECISION AND ORDER

Defendants.

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CONEY ISLAND SITE 1824 HOUSES, INC.,
OCEANGATE L.P., AND GRENADIER REALTY
CORP.,

Third-Party Plaintiffs,

-against-

SATO CONSTRUCTION CO. INC. D/B/A FLAG
WATERPROOFING & RESTORATION
COMPANY, FALCO CONSTRUCTION CORP.,
TULLY CONSTRUCTIONCO. INC., AND
STONE CITY ENTERPRISES INC.,

Third-Party Defendants.

-----X
SATO CONSTRUCTION CO. INC. D/B/A FLAG
WATERPROOFING & RESTORATION
COMPANY,

Second-Third-Party Plaintiffs,

-against-

STONE CITY ENTERPRISES INC.,

Second Third-Party Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____	248 – 262 _____
Opposing Affidavits (Affirmations) _____	265 – 266 _____
Affidavits/Affirmations in Reply _____	268 – 273 _____

Upon the foregoing papers, plaintiff Ruben Rivas (plaintiff) moves for an order, pursuant to CPLR 2221 (d), granting him leave to reargue his prior motion for summary judgment on the issue of liability under Labor Law § 241 (1), which was denied by an order dated March 25, 2025; and upon reargument, awarding Plaintiff partial summary judgment on this issue (motion sequence number 9). Defendants Coney Island Site 1824 Houses Inc., Oceangate L.P. and Grenadier Realty Corp., (collectively, the Coney Island Defendants) and Third-Party Defendant Sato Construction Co. Inc., d/b/a Flag Waterproofing & Restoration Company (Flag Waterproofing) oppose the motion.

This action arises out of an accident that occurred on August 16, 2019, when plaintiff allegedly sustained injuries after he fell from a ladder while painting a balcony. In his prior motion (motion sequence number 5), plaintiff sought partial summary judgment on the issue of liability on his Labor Law § 240 (1) cause of action. On March 25, 2025, this Court rendered its decision, finding that while plaintiff met his prima facie burden, factual issues existed as to whether he was the sole proximate cause of the accident and/or a recalcitrant worker based on Jose David Gutama Alvarracin’s (Alvarracin) affidavit.¹ In his affidavit, Alvarracin stated that prior to the date of the accident,² he had instructed plaintiff not to climb up onto the ladder to do work, and to leave such work to his younger co-workers.

Now, plaintiff contends that this Court misapprehended the facts and controlling law in finding a triable issue of fact as to whether plaintiff was the sole proximate cause of the accident or a recalcitrant worker based on Alvarracin’s affidavit. Specifically, plaintiff asserts that the Court did not properly account for the fact that Alvarracin was at another site and was not present on the day of plaintiff’s accident and the on-site supervisor directed plaintiff to use the ladder. In addition, plaintiff argues that Alvarracin’s alleged prior instruction to not use the ladder does not render

¹ Alvarracin was a foreman with Stone City Enterprises, Inc., plaintiff’s employer.

² It is undisputed that Alvarracin was not present at the jobsite on the date of plaintiff’s accident, and he only arrived after the fact.

plaintiff a recalcitrant worker or the sole proximate cause of his injuries. In support, plaintiff cites to *Gordon v Eastern Railway Supply, Inc.* (82 NY2d 555 [1993]) and *Zong Wang Yang v City of New York* (207 AD3d 791 [2d Dept 2022]).

In their oppositions, the Coney Island Defendants and Flag Waterproofing argue that the Court did not overlook or misapprehend any fact or law and that the Court correctly determined that there are issues of fact with respect to plaintiff's Labor Law § 240 (1) claim. Flag Waterproofing asserts that plaintiff has not distinguished the cases cited by the Court in its decision from the facts of this case. In addition, Flag Waterproofing argues that *Gordon* and *Zong Wang Yang* are not on point since Alvarracin's instruction did not seek to avoid the use of unsafe equipment. The Coney Island Defendants also argue that plaintiff's motion reiterates the same arguments made in his reply papers, which were already considered and rejected by the Court. Moreover, the Coney Island Defendants emphasize that the Court's decision expressly considered and rejected plaintiff's argument regarding the timing of Alvarracin's instruction. The Coney Island Defendants further assert that credibility issue arising from Alvarracin's affidavit and plaintiff's deposition testimony cannot properly be determined on a summary judgment motion.

In reply, plaintiff asserts that the Court misapprehended the fact that the on-site supervisor on the subject date directed him to work from the ladder. In addition, plaintiff maintains that *Gordon* and *Zong Wang Yang* are dispositive and stand for the proposition that an instruction not to engage in an unsafe work practice does not constitute a "safety device" under Labor Law § 240 (1). Contrary to the Coney Island Defendants' argument, plaintiff argues that there is no credibility dispute since Alvarracin was not present. According to plaintiff, there is no evidence to dispute his testimony that the on-site supervisor told him to work from the ladder.

The decision to grant leave to reargue is at the sound discretion of the court (*see Rodney v New York Pyrotechnic Prod. Co.*, 112 AD2d 410, 411 [2d Dept 1985] [internal citation omitted]). A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221 [d] [2]). Moreover, a motion for leave to reargue is "not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999] [internal citations omitted]). Accordingly, the movant must demonstrate in what manner the court, in rendering its original determination,

overlooked or misapprehended the relevant facts or law and cannot include facts not offered on the prior motion (*Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d 819, 820 [2d Dept 2011]). Upon the Court’s review of the merits of the movant’s arguments, the motion for reargument is essentially granted (*see McNamara v Rockland Cnty. Patrolmen’s Benevolent Ass’n, Inc.*, 302 AD2d 435, 436 [2d Dept 2003]). Thus, the only remaining question is whether the Court will adhere to its prior determination.


Upon review of the documents submitted, the Court finds that in opposition to Plaintiff’s original motion, no issue of fact was raised as to whether plaintiff was the sole proximate cause of the accident and/or a recalcitrant worker. While Alvarracin may have previously instructed plaintiff not to use the ladder, it is uncontested that Alvarracin was not present at the jobsite on the date of the accident. In his affidavit, Alvarracin acknowledged that “John” was the foreman that day, but did not “think John gave [plaintiff and his co-workers] instructions that morning.” Plaintiff’s assertion that he was instructed to use the ladder on the subject date is un rebutted. Thus, there cannot be an issue of fact since no evidence was submitted that plaintiff was not instructed to work on the ladder at the time of the accident.

Accordingly, it is hereby,

ORDERED, that plaintiff’s motion (motion sequence 9) for leave to reargue is granted; and upon reargument, this Court’s March 25, 2025, order is vacated only to the extent that plaintiff’s motion for partial summary judgment (motion sequence number 5) is granted.

Any issued not addressed herein are either without merit or moot.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.
**Hon. Ingrid Joseph
Supreme Court Justice**

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KINGS COUNTY CLERK
FILED