

<b>Ferluckaj v Goldman Sachs &amp; Co.</b>
2007 NY Slip Op 30279(U)
March 9, 2007
Supreme Court, New York County
Docket Number: 0120760
Judge: Rolando T. Acosta
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

DEFENDANT:

PART 11

Index Number : 120760/2002

FERLUCKAJ, MILIHA

INDEX NO. \_\_\_\_\_

VS

GOLDMAN SACHS

MOTION DATE \_\_\_\_\_

Sequence Number : 004

MOTION SEQ. NO. \_\_\_\_\_

REARGUMENT/RECONSIDERATION

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause - Affidavits — Exhibits ...

Answering Affidavits Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion: Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**  
MAR 2 2002  
NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SO ORDERED

Dated: \_\_\_\_\_

J.S.C.

Check one: FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK PART 61**

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Miliha Ferluckaj,

Plaintiff,

against

Goldman Sachs & Co., and Henegan  
Construction Co., Inc.,

Defendants.

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Goldman Sachs & Co.,

Third-Party Plaintiff,

against --

American Building Maintenance Co.

Third-Party Defendant.

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**DECISION/ORDER**

Index No. 120760/04

Motion Seq. 4

**Present:**

**Hon. Rolando T. Acosta**  
Supreme Court Justice

**FILED**  
MAR 23 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

The following documents were considered in reviewing third-party defendant American Building Maintenance's motion for reargument:

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion, Affirmation in Support</b>	<b>1, 2 (Ex. A-L)</b>
<b>Affirmation in Opposition</b>	<b>3</b>
<b>Affirmation in Partial Opposition</b>	<b>4</b>
<b>Reply Affirmation</b>	<b>5</b>

Third-Party Defendant American Building Maintenance's motion for reargument is granted, and upon reargument, defendant Goldman Sachs & Co.,' motion for summary judgment dismissing plaintiff Milha Ferluckaj's Labor Law § 240(1) claim is granted and American Building Maintenance's motion for summary judgment against Goldman Sachs & Co. in the third-party action is also granted.

Plaintiff Miliha Ferluckaj, an employee of American Building Maintenance Co. ("ABM"), initiated this action for personal injuries she allegedly sustained on March 22, 2001 while cleaning the windows on the 29<sup>th</sup> floor of defendant Goldman Sachs & Co. ("Goldman") offices located at 32 Old Slip Road, New York, New York ("the building"). ABM was hired by the Paramount Group, the owner of the building, to provide basic office cleaning and janitorial services. Plaintiff alleges that at the time of the accident she was cleaning windows on Goldman's 29<sup>th</sup> floor offices when she slip and fell off a desk on which she was standing on to reach the windows, resulting in physical injuries

It is undisputed that at the date of plaintiff's slip and fall, she was aware that ABM had stepladders or step tools for use by its cleaning staff, but never requested to use such equipment. Rather, at her deposition plaintiff testified that she took it upon herself to stand on the desk to clean the windows. As such, plaintiff is not afforded the protection of Labor Law § 240(1). That is, "since ladders were readily available, plaintiff's "normal and logical response" should have been to go and get one. Plaintiff's choice to use [the desk] to get up, and then to jump down, was the sole cause of [her] injury, and [she] is therefore not entitled to recover under Labor Law § 240(1)." Montgomery v. Federal Express Corp., 4 N.Y.3d 805 (2005); see also Blake v. Neighborhood Hous. Servs. of N.Y. City, 1 N.Y.3d 280 (2003).

Upon reargument, ABM also requests that this Court grant summary judgment in favor of ABM in Goldman Sachs & Co.'s third-party action against ABM for indemnity. It is undisputed that ABM entered into a contract with Paramount Group, Inc. ("PGI"), the owner of the subject building, to provide basic office cleaning and janitorial services. However, ABM also entered into an oral agreement with American Building Maintenance's motion for summary judgment against Goldman Sachs & Co. in the third-party action is also granted. to provide additional cleaning services. Thus, according to Goldman, it is this relationship between Goldman and ABM which entitles Goldman to indemnification based on the indemnity clause in the contract between Goldman and PGI. The Court disagrees. "Where the plaintiff has not sustained a "grave injury", section 11 of the Workers' Compensation Law bars third-party actions against employers for indemnification or contribution unless the third-party action is for contractual

indemnification pursuant to a written contract in which the employer “expressly agreed” to indemnify the claimant.” Tonking v. Port Authority of N.Y. & N.J., 3 N.Y.3d 486 (2004). Goldman does not claim that plaintiff did not suffer a “grave injury” within the meaning of that statute, or that ABM had an explicit agreement to indemnify Goldman pursuant to a written contract. Accordingly, based upon the foregoing, it is hereby

ORDERED that Third-Party Defendant American Building Maintenance’s motion for reargument is GRANTED; and it is further

ORDERED that Goldman Sachs & Co.’s motion for summary judgment dismissing plaintiff Milha Ferluckaj’s Labor Law § 240(1) claim is GRANTED; and it is further

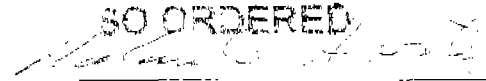
ORDERED that American Building Maintenance’s motion for summary judgment against Goldman Sachs & Co. in the third-party action is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: March 9, 2007

ENTER

~~SO ORDERED~~



Rolando T. Acosta, J.S.C.

Check one:  FINAL DISPOSITION

~~ROLANDO T. ACOSTA~~  
 NON-FINAL DISPOSITION

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**FILED**  
MAR 10 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

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