

Andrade v 575 Bedford Ave Holdings LLC

2025 NY Slip Op 31430(U)

April 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 511197/2021

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 18th day of April 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

JOSE ORTIZ ANDRADE,

Plaintiff,

-against-

575 BEDFORD AVE HOLDINGS LLC,
YAZIV CORP. and KW BUILDERS, INC.,

Defendants.

575 BEDFORD AVE HOLDINGS LLC,

Third-Party Plaintiff,

-against-

SAFECO CONTRACTING.,

Third-Party Defendant.

DECISION & ORDER

Index No.: 511197/2021

Calendar No.: 9 and 10

Motion Seq.: 7 and 8

Return Date: 3/6/25

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
MS#7 575 Bedford's Notice of Motion, Affirmation, and Exhibits (NYSCEF 162-179).....	1, 2
Plaintiff's Affirmation and Memorandum of Law and Statement of Facts in Opposition (NYSCEF 200-203).....	3
Reply Affirmation (NYSCEF 210).....	4
Safeco's Affirmation and Statement of Facts in Support of Cross- Motion and in Opposition 575 Bedford's Motion (NYSCEF 182-184).....	5
Reply Affirmation (NYSCEF 210).....	6

MS#8 Safeco’s Affirmation and Statement of Facts
in Support of Cross-Motion (NYSCEF 182-184).....7, 8

575 Bedford’s Affirmation and Statement
of Facts in Opposition (NYSCEF 198-199).....9)

Plaintiff’s Affirmation and Memorandum of Law
and Statement of Facts in Opposition (NYSCEF 204-206).....10

Reply Affirmation (NYSCEF 209)11

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This is an action for personal injuries sustained by plaintiff while performing construction and demolition activities at defendant/third-party 575 Bedford Ave Holdings LLC’s (575 Bedford) premises in the course of his employment with third-party defendant Safeco Contracting (Safeco). The premises were leased to a non-party. It is undisputed that plaintiff was injured when he and a co-worker were pulling down a window attached to a rope while standing at ground level. The rope detached from the window frame causing the co-worker to fall on plaintiff causing his injuries. It is alleged that “every worker at the project knew how to do the work, including the removal of windows. Mr. Wertzberger [Safeco’s owner] taught his method of tying the rope to all Safeco workers.”¹

Defendant/Third-Party 575 Bedford appeared and answered asserting cross-claims against Yaziv Corp. and KW Builders who have not appeared or answered in this action. 575 Bedford also served a third-party complaint on Safeco. Safeco answered the third-party complaint and asserted cross-claims against 575 Bedford. However, 575 Bedford never served a response to Safeco’s claims.

¹ Plaintiff’s affirmation in opposition, ¶14 (NYSCEF 200).

575 Bedford has now served a motion for summary judgment dismissing plaintiff's complaint, a default judgment against the non-appearing Yaziv Corp. on its cross-claims, and summary judgment on its third-party claims for contractual indemnification against Safeco. If the Court does not dismiss plaintiff's complaint, 575 Bedford also moved for leave to serve a late answer to Safeco's cross-claims. Safeco has moved for summary judgment dismissing plaintiff's complaint and the third-party complaint.

Labor Law § 200 & § 241 (6)

Labor Law § 200 only applies to owners, general contractors, or their agents because it is a codification of their common-law duty to maintain a safe workplace (*Delaluz v Walsh*, 228 AD3d 619, 621 [2d Dept. 2024]). "An implicit precondition to [the] duty to provide a safe place to work is that the party charged with that responsibility have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition" (*id.* [internal citations and quotations omitted]; *Guclu v 900 Eighth Avenue Condominium, LLC*, 81 AD3d 592, 593 [2d Dept. 2011]). An owner and general contractor may also be held liable "[W]here a plaintiff's injuries stem not from the manner in which the work was being performed, but, rather, from a dangerous condition on the premises, [an owner and/or general contractor] may be liable under Labor Law § 200 if it either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition" (*Banscher v Actus Lend Lease, LLC*, 132 AD3d 707, 709 [2d Dept. 2015]).

Here, plaintiff concedes that Safeco was responsible for the training of the means and methods for removing the windows. Therefore, plaintiff has not opposed the dismissal of the common law negligence, Labor Law § 200 and § 241 [6] causes of action.

Labor Law § 240 [1]

Labor Law § 240 [1], more commonly known as the “Scaffold Law,” imposes a non-delegable duty upon owners, contractors, and their agents to provide adequate safety protection for workers. The statute places the “ultimate responsibility for safety practices” on the owner and general contractor, rather than on individual workers “who are scarcely in a position to protect themselves from accident.” (*see Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 520 [1985] [internal quotation marks omitted]). To this end, the duty is nondelegable and an owner or contractor will be held strictly and absolutely liable for any injury proximately caused by a violation of Labor Law § 240 [1], even though the injury producing work was being performed by an independent contractor over which it exercised no supervision or control (*see Gordon v Eastern Ry. Supply*, 82 NY2d 555, 559, 562 [1993]).

This absolute liability is imposed whenever a worker’s injury is proximately caused by the failure to provide proper protection from harm directly flowing from the application of the force of gravity to an object or person at a construction site (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993] and *Morales v City of New York*, 245 AD2d 431, 432 [2d Dept 1997]). Accordingly, a *prima facie* case of liability requires a plaintiff to demonstrate both that the statute was violated, and that the statutory violation was a proximate cause of his or her injuries (*see Zimmer v Chemung County Performing Arts*, 65 NY2d at 519).

Specifically with respect to falling objects, Labor Law § 240 [1] applies where the harm of a falling of object is related to a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured (*Flores v Fort Green Homes, LLC*, 227 AD3d 672, 673 [2d Dept 2024], *citing Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [2001] [internal quotations omitted]). To establish a violation of Labor Law § 240 [1] under this

scenario, plaintiff must demonstrate (1) more than an object simply fell (*Turczynski v City of New York*, 17 AD3d 450, 451 [2d Dept 2005]) and (2) the object “was being hoisted or secured, or that the falling object required securing for the purposes of the undertaking” (*Banscher v Actus Lend Lease, LLC*, 103 AD3d 823 [2nd Dept 2013]). (*Flores v Fort Green Homes, LLC*, 227 AD3d 673).

Plaintiff’s accident happened due to gravity on a falling object (*Morales v. City of New York*, 245 AD2d 432). This occurred through the negligence of the general contractor, Safeco, who provided improper means and methods to secure the window during the undertaking of window removal at the construction site (*Banscher v Actus Lend Lease*, 103 AD3d 823]). 575 Bedford’s argument that as an out-of-possession landlord it cannot held liability under Labor Law § 240 [1] is devoid of merit. 575 Bedford and Safeco’s motions for summary judgment dismissing plaintiff’s Labor Law § 240 [1] cause of action are denied (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 501 and *Morales v City of New York*, 245 AD2d 432).

Indemnification

To impose liability for contractual indemnification against an indemnitor, they must *actually* exercise supervision and control over the work; contractual authority standing alone is insufficient (*McCarthy v Turner Construction, Inc.*, 17 NY3d 369, 378 [2011] and *Chapa v. Bayles Props., Inc.*, 221 AD3d 855, 857 [2d Dept. 2023]). An indemnitee’s right to contractual indemnification also “depends upon the specific language of the contract” (*Chapa v. Bayles Props., Inc.*, 221 AD3d 857).

575 Bedford has established as a matter of law that (1) it bore no responsibility for the happening of plaintiff’s accident as an out-of-possession landlord and (2) Safeco was negligent in the means and methods for the undertaking of window removal (*Morales v. City of New York*,

245 AD2d 432 and *Chapa v. Bayles Props., Inc.*, 221 AD3d 857). The failure to implement a safe method for the performance of the window removal and protect plaintiff from this falling object was the proximate cause of his accident (*id.*). Accordingly, 575 Bedford's motion for an order awarding contractual indemnification from Safeco and dismissing Safeco's cross-claims is granted (*McCarthy v Turner Construction, Inc.*, 17 NY3d 376-378), Safeco's motion to dismiss the third-party complaint is denied, and 575 Bedford's motion for an order granting leave to file a late answer to Safeco's cross-claims is denied as moot.

The Court has considered the parties remaining arguments and finds same to be without merit. Accordingly, it is hereby

ORDERED that that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC's motion for an order granting summary judgment dismissing plaintiff's common law negligence and Labor Law § 200 and § 241 [6] causes of action is granted, and it is further

ORDERED that that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC's motion for an order granting summary judgment dismissing plaintiff's Labor Law § 240 [1] cause of action is denied, and it is further

ORDERED that that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC's motion for an order granting summary judgment against third-party defendant SAFECO CONTRACTING on its third-party complaint for contractual indemnification and dismissing third-party defendant SAFECO CONTRACTING'S cross-claims in the third-party answer is granted, and it is further

ORDERED that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS shall submit a Clerk's judgment against third-party defendant SAFECO CONTRACTING and the Clerk shall enter judgment accordingly, and it is further

ORDERED that that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC's motion for an order granting a default judgment on its cross-claims against defendant YAZIV CORP. is granted and defendant/third-party shall enter judgment against defendant YAZIV CORP. after the conclusion of this action with the appearing defendants, and it is further

ORDERED that that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC shall serve a copy of this Order with Notice of Entry upon defendant YAZIV CORP. by First Class Mail with Certificate of Mailing and file proof of service in NYSCEF, and it is further

ORDERED that defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC's motion for an order granting leave to serve a late answer to third-party defendant SAFECO CONTRACTING's cross-claims in the third-party answer is denied as moot, and it is further

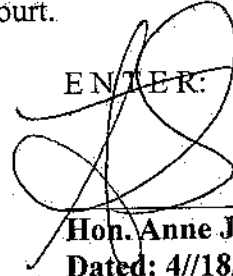
ORDERED that third-party defendant SAFECO CONTRACTING's motion for an order granting summary judgment dismissing plaintiff's common law negligence and Labor Law § 200 and § 241 [6] causes of action is granted, and it is further

ORDERED that third-party defendant SAFECO CONTRACTING's motion for an order granting summary judgment dismissing plaintiff's Labor Law § 240 [1] cause of action and defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC's third-party complaint is denied, and it is further

ORDERED that this action shall proceed to trial on damages only.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 4/18/2025

For Clerks use only:

MG _____

MD _____

Motion seq. # _____