

**Andrade v 575 Bedford Ave Holdings LLC**

2025 NY Slip Op 33316(U)

September 2, 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 2<sup>nd</sup> day of September 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.*

**DECISION & ORDER**

Index No.: 511197/2021

Calendar No.: 8

Motion Seq.: 10

Return Date: 7/31/25

575 BEDFORD AVE HOLDINGS LLC,

*Third-Party Plaintiff,*

*-against-*

SAFECO CONTRACTING.,

*Third-Party Defendant.*

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

	<b>Papers Numbered</b>
Notice of Motion and Supporting Documents (NYSCEF 235-237).....	1, 2
Affirmations in Opposition (NYSCEF 238-239).....	3
Reply Affirmations and Supporting Documents (NYSCEF 244-247) .....	4

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

**Factual History and Procedural History**

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.”<sup>1</sup>

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.

#### **Prior Motions for Summary Judgment (Motion Sequences 007 and 008)**

575 Bedford 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 also moved for summary judgment dismissing plaintiff’s complaint and the third-party complaint.

By an order dated 4/18/2025, as to 575 Bedford’s motion, the Court (1) granted summary judgment dismissing plaintiff’s common law negligence, Labor Law § 200 and § 241 [6] causes of action against it, (2) denied summary judgment dismissing plaintiff’s Labor Law § 240 [1]

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<sup>1</sup> Plaintiff’s affirmation in opposition, ¶14 (NYSCEF 200).

cause of action, (3) granted summary judgment on its contractual indemnification claim against third-party defendant Safeco and dismissed Safeco's cross-claims, (4) granted a default judgment against Yaziv Corp., and (5) granted leave to 575 Bedford to serve a late answer to Safeco's cross-claims. (Motion Sequence 007).

With respect to Safeco's motion, the Court (1) granted summary judgment dismissing plaintiff's common law negligence, Labor Law § 200 and § 241 [6] causes of action against it, (2) denied summary judgment dismissing plaintiff's Labor Law § 240 [1] cause of action, and (3) denied summary judgment dismissing 575 Bedford's third-party complaint. (Motion Sequence 008).

In reaching the foregoing determinations, the Court made the following factual findings in the Order dated 4/18/2025:

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).

Based on the foregoing, the Court granted "reverse summary judgment" to plaintiff and ordered that the action shall proceed to trial on damages only. However, the Court within the body of the decision did not specifically state that per CPLR § 3212 [b], plaintiff was "entitled to [an order of] summary judgment without the necessity of a cross-motion."

**Safeco's Motion to Reargue the Order dated 4/18/2025**

Safeco has now moved for order pursuant to CPLR § 2221 [d] granting leave to reargue the Order dated 4/18/2025 as follows:

[D]enied the portions of 575 BEDFORD AVE HOLDINGS LLC's ("Bedford") and Safeco's motions for summary judgment, seeking a dismissal of Plaintiff's claims under Labor Law § 240(1) and granting Bedford's motion for summary judgment on Bedford's contractual indemnity claims against Safeco; (2) pursuant to CPLR § 5019 and this Court's inherent powers, granting Safeco's motion to modify, resettle, or vacate the Decision and Order due to inconsistencies contained therein, specifically the implication that plaintiff is entitled to a trial on damages even though he never moved for summary judgment and this Court never awarded plaintiff summary judgment; (3) upon granting such leave, denying Bedford's motion for summary judgment on Bedford's contractual indemnity causes of action against Safeco and Granting Bedford and Safeco's motions seeking a dismissal of Plaintiff's claims under Labor Law § 240(1), or at least finding an issue of fact on Labor Law § 240(1); and (4) for such other relief that this court deems appropriate.

Defendant/Third-Party Plaintiff 575 Bedford has submitted an affirmation in partial support of Safeco's motion and requests reargument of that portion of the order denying dismissal of plaintiff's complaint in its entirety and awarding plaintiff summary judgment.

### Law & Analysis

It is well established a motion for leave to reargue is addressed to the sound discretion of the court and affords the moving party an opportunity to show that the court overlooked or misapprehended matters of fact or the law, or for some reason mistakenly arrived at its earlier decision (see CPLR § 2221 [d] [2]; *JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 776, 778 [2d Dept. 2018]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2d Dept. 2015]). Such a motion "shall not include any matters of fact not offered on the prior motion" (*Williams v Abiomed, Inc.*, 173 AD3d 1115, 1116 [2d Dept. 2019] [internal citations omitted]; CPLR § 2221 [d] [2]). Such a motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*Williams v Abiomed, Inc.*, 173 AD3d 1116).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence

to demonstrate the absence of any material issue of fact.” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). Where it appears that “any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion” (CPLR § 3212 [b]; *Smerka v Niagara Mohawk Power Corp.*, 206 AD2d 891 [4<sup>th</sup> Dept 1994]), provided that the issue determined in favor of the non-moving party was before the Court (*Garcia v Lopez*, 59 AD3d 593, 594-595 [2d Dept 2009]; *Harsch v City of New York*, 78 AD3d 781, 784 [2d Dept 2010]; cf. *Dunham v Hilco Construction Co.*, 89 NY2d 425, 430 [1996]).

Here, the Court grants Safeco’s motion for reargument per CPLR § 2221 [d], and upon reargument clarifies and adheres to its initial determination in the Order dated 4/18/2025 as the Court did not overlook or misapprehend a question of law or fact when it granted “reverse summary judgment” to plaintiff (*Williams v Abiomed, Inc.*, 173 AD3d 1116). The issues of whether (1) plaintiff’s accident was within the ambit of Labor Law § 240 [1], (2) defendants and third-party defendants violated Labor Law § 240 [1] and (3) the violation was the proximate cause of plaintiff’s injuries was fully briefed by all parties and properly before the Court (*Smerka v Niagara Mohawk Power Corp.*, 206 AD2d 891; *Garcia v Lopez*, 59 AD3d 594-595; *Harsch v City of New York*, 78 AD3d 784). The Court also adheres to its remaining determinations in said order.

The Court has considered the parties’ remaining arguments and find them to be without merit.

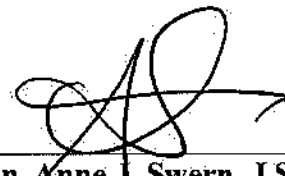
Accordingly, it is hereby

ORDERED that third-party defendant SAFECO CONTRACTING’s motion for an order per CPLR § 2221 [d] granting reargument of this Court’s Order dated 4/18/2025 is granted and

upon reargument, the Court adheres to its prior determinations and the balance of the motion is DENIED as to both defendant/third-party plaintiff 575 BEDFORD AVE HOLDINGS LLC and third-party defendant SAFECO CONTRACTING.

This constitutes the decision and order of the Court.

ENTER:



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

Dated: 9/2/2025

For Clerks use only: MG _____ MD _____ Motion seq. # _____
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