

**Andeliz v Hanac Corona Hous. Dev. Fund Corp.**

2025 NY Slip Op 33442(U)

September 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 510764/2018

Judge: Wavny Toussaint

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KINGS COUNTY CLERK  
2025 SEP 12 A 10:51

At an IAS Term, Part 70 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 11<sup>th</sup> day of September, 2025.

P R E S E N T :

HON. WAVNY TOUSSAINT,  
Justice.

\_\_\_\_\_  
NICIO ANDELIZ,

Plaintiff,

-against-

HANAC CORONA HOUSING DEVELOPMENT  
FUND CORPORATION, HANAC, INC., BRUNO  
FRUSTACI, INC., and J.W. ELECTRIC, CORP.,

Defendants.

Index No.: 510764/2018  
*MS # 13*  
**DECISION AND  
ORDER**

\_\_\_\_\_  
The following papers numbered 1 to read herein  
Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed  
Cross Motion and Affidavits (Affirmation) Annexed  
Answers/Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)  
Affidavit (Affirmation)  
Other Papers

Papers Numbered  
247-254  
\_\_\_\_\_  
263  
266

Upon the foregoing papers, defendant J.W. Electric, Corp. (“JW Elec.”) moves (Seq. 13) for an order, pursuant to CPLR §§ 2221(a) and 5019(a), resettling, correcting, clarifying and/or modifying the Court order dated October 23, 2024 (the “Order”).<sup>1</sup> The

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<sup>1</sup> The Order decided the underlying summary judgment motions of defendants Hanac Corona Housing Development Fund Corporation, Hanac, Inc. and Bruno Frustaci, Inc. (Seq. 09); JW Elec.’s motion (Seq. 10); and plaintiff’s cross-motion (Seq. 11).

motion is opposed by defendants Hanac Corona Housing Development Fund Corporation, Hanac, Inc. and Bruno Frustaci, Inc. (the “opposing defendants”).

### **Brief Background And The Parties’ Contentions**

In this action for personal injuries, plaintiff asserts claims under Labor Law §§ 240(1), 241(6), 200 and common law negligence arising from an electrical shock plaintiff allegedly sustained on May 10, 2018 while installing duct work around an air conditioning unit located on the roof of a residential construction site. JW Elec. takes issue with that part of the Order which granted summary judgment to the extent of dismissing JW Elec.’s contractual and common law indemnification crossclaims (the “crossclaims”), while also finding triable issues of fact existed regarding whether the opposing defendants were free from negligence in the happening of plaintiff’s accident.

JW Elec. argues that if, as the Court found, there are questions of fact surrounding whether the opposing defendants were free from negligence, it was inconsistent for the Court to then dismiss its crossclaims, also predicated upon opposing defendants’ negligence. JW Elec. asserts that logically the crossclaims must survive, and that accordingly, the first decretal paragraph of the Order granting opposing defendants’ motion (i.e., dismissing its crossclaims), should instead be corrected to deny that relief.

Opposing defendants contend the motion is an untimely motion to reargue. They also contend the motion does not seek to correct a mistake, defect or irregularity, as permitted under CPLR § 5019(a), but rather seeks a substantive change to the Order insofar as reviving the crossclaims which had been dismissed. In reply, JW Elec. argues there is no filing deadline within which to move under CPLR § 5019. JW Elec. also reiterates that

it is inconsistent to dismiss the crossclaims, while at the same time finding that the opposing defendants were not free from negligence.

### Discussion

“Pursuant to CPLR 5019(a), a trial court has the discretion to correct an order or judgment which contains a mistake, defect, or irregularity not affecting a substantial right of a party, or is inconsistent with the decision upon which it is based” (*Carter v. Johnson*, 110 AD3d 656, 658, [2d Dept 2013] [citations omitted]).

Here, JW Elec. is correct that the first decretal paragraph of the Order is inconsistent with the factual determination that opposing defendants may not be free from negligence in the happening of the accident. Logically, the factual determination renders all requested relief premised on their negligence, or lack thereof, a triable issue and any grant of summary judgment improper. Thus, the Court finds that the first decretal paragraph of the Order dismissing JW Elec’s crossclaims is inconsistent with the factual determinations set forth in the Order (*Mascia v Mascia*, 161 AD3d 977, 978 [2d Dept 2018] [“The Supreme Court had the authority to modify the third decretal paragraph of the original judgment, given the discrepancy between the terms of that decretal paragraph and the underlying decision.”]; *Woolfalk v New York City Hous. Auth.*, 36 AD3d 444, 444 [1st Dept 2007] [“While ordinarily the statute contemplates the correction of ministerial mistakes, even errors of substance are correctable where there is support in the record for such change.”]). The Court’s determination in this regard reflects the statute’s provision which permits the Court to correct an order “inconsistent with the decision upon which it is based” (CPLR § 5019(a)).

**Conclusion**

Accordingly, it is hereby

**ORDERED**, that JW Elec.’s motion (Seq. 13) is granted to the extent that pursuant to CPLR § 5019(a), the Order is amended so as to deny that part of opposing defendant’s motion which sought dismissal of JW Elec.’s crossclaims; and shall read as follows:

**“ORDERED** that that part of defendants HCHDFC, H-Inc. and Bruno’s motion (Seq. 09) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing plaintiff’s Labor Law §§ 240(1), 241(6) and 200 and common law negligence claims, is granted; except as to plaintiff’s Labor Law § 241(6) claim, predicated on Industrial Code § 23-1.13(b)(4) “Electrical Hazards”; dismissal of all crossclaims asserted by co-defendant JW Elec.; and summary judgment as to the common law and contractual indemnification claims asserted against JW Elec.”.

The remaining arguments of the parties have been considered and are denied.

This constitutes the decision and order of the Court.

E N T E R

  
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J.S.C.

**HON. WAVNY TOUSSAINT**  
**J. S. C.**

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