

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Hodges v. 37-11 30th St., LLC

Hodges, 2026 NY Slip Op 03428 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2025-02023 · Decided June 3, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order denying the defendants' motion for summary judgment because the motion papers lacked a word count certification. The court held that the omission should have been overlooked because no substantial right was prejudiced and remitted the matter for a determination on the merits.

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Pierre Hodges, plaintiff-respondent, v 37-11 30th Street, LLC, et al., defendants third-party plaintiffs-appellants; PPEE Construction, Inc., third-party defendant-respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 3, 2026 2025-02023, (Index No. 504660/21) Angela G. Iannacci, J.P.

Paul Wooten Lourdes M. Ventura Lisa S. Ottley, JJ. Coffey Modica LLP (The Law Offices of Seth M. Weinberg, PLLC, Hauppauge, NY, of counsel), for defendants third-party plaintiffs-appellants. Law Offices of Michael S. Lamonsoff, PLLC (Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY [Brian J. Isaac and Paul H. Seidenstock], of counsel), for plaintiff-respondent.

Hall Booth Smith, P.C., Garden City, NY (James M. Murphy and Louis Valvo of counsel), for third-party defendant-respondent. [*1] DECISION & ORDER In an action to recover damages for personal injuries, the defendants third-party plaintiffs appeal from an order of the Supreme Court, Kings County (Joy F. Campanelli, J.), dated January 15, 2025.

The order denied the defendants third-party plaintiffs' motion for summary judgment dismissing the amended complaint and on their third-party causes of action for contractual defense and indemnification, breach of contract, and failure to procure insurance. ORDERED that the order is reversed, on the law and in the exercise of discretion, with one bill of costs, and the matter is remitted to the Supreme Court, Kings County, for a new determination on the merits of the defendants third-party plaintiffs' motion for summary judgment dismissing the amended complaint and on their third-party causes of action for contractual defense and indemnification, breach of contract, and failure to procure insurance.

The plaintiff commenced this action to recover damages for personal injuries he allegedly sustained at a construction site owned by 37-11 30th Street, LLC, 37-11 30th Street Holdings, LLC, and Slate Property Group, LLC, at which SD Builders and Construction, LLC (hereinafter collectively the appellants), served as the general contractor. Thereafter, the appellants commenced a third-party action against PPEE Construction, Inc. (hereinafter PPEE), the plaintiff's employer, alleging certain third-party causes of action.

Subsequently, the appellants moved for summary judgment dismissing the amended complaint and on their third-party causes of action for contractual defense and indemnification, breach of contract, and failure to procure insurance.

The plaintiff and PPEE separately opposed the motion. By order dated January 15, 2025, the Supreme Court denied the motion on the ground that the appellants failed to include a word count certification with the motion papers. This appeal [*2] ensued.

The Supreme Court should have overlooked the appellants' failure to submit a word count certification with their motion for summary judgment, as no substantial right of any party was prejudiced (see *Bonas v RRR & N Corp.*, 240 AD3d 851, 852; *Taveras v Incorporated Vil. of Freeport*, 225 AD3d 822, 823; *Anuchina v Marine Transp. Logistics, Inc.*, 216 AD3d 1126, 1127; *Young v City of New York*, 164 AD3d 711, 713).

Accordingly, we reverse. Since the Supreme Court did not consider the merits of the motion, we remit the matter to the Supreme Court, Kings County, for a new determination on the merits of the motion. In light of our determination, we need not consider the remaining contentions addressing the merits of the motion, and take no position regarding the ultimate disposition of the motion.

IANNACCI, J.P., WOOTEN, VENTURA and OTTLEY, JJ., concur. ENTER: Darrell M. Joseph
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