

**Arias v Skyline Windows, Inc.**

2011 NY Slip Op 30064(U)

January 5, 2011

Supreme Court, New York County

Docket Number: 113044/08

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
**MARTIN SHULMAN**

DEPARTMENT: J.S.C.

PART 1

Case Number : 113044/2008

DEBIAS, ANGELO G.

INDEX NO. 113044/08

vs  
SKYLINE WINDOWS, INC.

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

Sequence Number : 003

MOTION SEQ. NO. 003

SUMMARY JUDGMENT

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

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

	PAPERS NUMBERED
Notice of Motion/ <del>Order to Show Cause</del> — Affidavits — Exhibits <u>A-G</u>	<u>1</u>
Answering Affidavits — Exhibits <u>A+B</u>	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

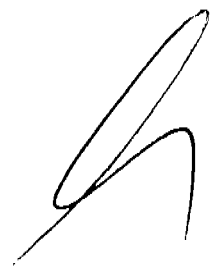
MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**

JAN 11 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: January 5, 2011

  
**MARTIN SHULMAN**  
J.S.C. J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check If appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ANGELO G. ARIAS,

Plaintiff,

Index No. 113044/08

-against-

Decision

SKYLINE WINDOWS, INC.

Defendant.

-----X  
SKYLINE WINDOWS, LLC,

Third-Party Plaintiff,

**FILED**

-against-

JAN 11 2011

LUIS FIGUEROA,

Third Party Defendant.

NEW YORK  
COUNTY CLERK'S OFFICE  
X

SHULMAN, J.:

Defendant and Third Party Plaintiff Skyline Windows (hereafter "Skyline") moves pursuant to CPLR 3212 for summary judgment dismissing the complaint as against it on the grounds that plaintiff cannot establish a *prima facie* case of negligence on Skyline's part.

Plaintiff had been employed in building maintenance at Cadman Towers, Inc. in Brooklyn since 2003. Cadman Towers owns two buildings adjacent to each other with the respective addresses of 10 Clinton Street and 101 Clark Street. Plaintiff was injured on October 10, 2007 in the compactor room of 10 Clinton Street while pulling a trash container. He was walking backwards pulling the container while his colleague, Michael German, was pushing, when he slipped on broken glass on the compactor

room floor. He fell and the trash container rolled over his right foot and pinned him there. Plaintiff observed several pieces of glass on the floor and further observed that they came from large glass window panes which he recognized as having been removed from Cadman Plaza building windows as part of an ongoing window replacement project.

Skyline's application relies on deposition testimony from plaintiff and Skyline's site supervisor, Mario Bellino (Exhibits "C" and "E" respectively annexed to Skyline's moving papers). In sum, Bellino testified that Skyline workers were not scheduled to do any work at 10 Clinton Street until October 22, 2007, twelve days after plaintiff's injury. Skyline's Exhibit "F" annexed to the moving papers includes business records supporting Bellino's testimony. Skyline also cites testimony from plaintiff's deposition which, in sum, clearly demonstrates that he never personally saw a Skyline employee put the glass in the 10 Clinton Street compactor room. From the foregoing, Skyline contends that it has established conclusively, for purposes of this motion, that its employees had no contact with the offending glass on the compactor room floor and therefore Skyline has no liability for plaintiff's injuries.

Bellino's testimony, *inter alia*, establishes that Skyline employees were not scheduled to work in 10 Clinton at the time of plaintiff's injury, nor were they instructed to place glass panes in the 10 Clinton compactor room. However, Bellino conceded that Skyline had been working on the Cadman Towers property window replacement contract since at least February of 2007. Although Bellino produced business records supporting his allegations that no Skyline workers were present at 10 Clinton Street on the day of plaintiff's injury, he conceded that he never investigated nor questioned any

of his workers as to whether they were *in fact* in 10 Clinton on the day of the injury. His testimony fails to establish that Skyline workers conformed to their own procedures and schedules.

Plaintiff testified in his deposition that he had seen Skyline workers, identifiable from their uniforms, in 10 Clinton on the day before his injury. The affidavit of Michael German, annexed to plaintiff's affidavit as Exhibit "A", corroborates plaintiff's testimony that Skyline workers were present.

Summary judgment may only be granted when no triable issues of fact exist. "On a motion for summary judgment, the function of the court is not to determine issues of fact or credibility, but merely to determine the existence of such issues (citations omitted). Moreover, since summary judgment is the procedural equivalent of a trial, it must be denied if any doubt exists as to a triable issue or where a material issue of fact is arguable (citation omitted). Further, in deciding such a motion, the facts alleged by the nonmovant and inferences that may be drawn therefrom must be accepted as true (citations omitted)." *Dykeman v. Heht*, 52 AD3d 767 (2d Dept 2008).

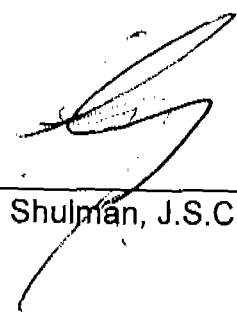
On these papers there is sufficient evidence demonstrating the existence of a triable issue of fact; *i.e.*, whether or not Skyline employees were present in the vicinity of the accident site and therefore available to create a hazardous condition leading to plaintiff's injuries. Accordingly, it is

ORDERED that the motion is denied in all respects.

Counsel for the parties are directed to appear for a status conference on February 1, 2011 at 9:30 a.m. at Part 1, Room 325, 60 Centre Street, New York, New York.

The foregoing is this court's decision and order. Courtesy copies of this decision and order have been sent to counsel for the parties.

Dated: New York, New York  
January 5, 2011



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Martin Shulman, J.S.C.

**FILED**  
JAN 11 2011  
NEW YORK  
COUNTY CLERK'S OFFICE