

**Molina v Ray Bldrs., Inc.**

2025 NY Slip Op 32921(U)

July 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 511548/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York  
County of Kings

Index Number 511548/2022  
Seqs. 002

Part LL1

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

ERIK MOLINA,

Plaintiff,

against

RAY BUILDERS, INC., WATERVIEW OWNER LLC, CLIPPER EQUITY LLC, MILLERTIME CONSTRUCTION LLC, AND WATERVIEW DEVELOPER, LLC,

Defendants.

Papers Numbered	
Notice of Motion and Affidavits Annexed . . . . .	<u>1-2</u>
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Answering Affidavits . . . . .	<u>2-3</u>
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RAY BUILDERS, INC., WATERVIEW OWNER LLC, CLIPPER EQUITY LLC, AND WATERVIEW DEVELOPER LLC,

Third-Party Plaintiffs,

against

ABC OPUS SERVICES, INC. d/b/a OPUS OPERATIONS,

Third-Party Defendants.

ABC OPUS SERVICES, INC. d/b/a OPUS OPERATIONS,

Second Third-Party Plaintiffs,

against

HFL SERVICES INC.,

Second Third-Party Defendants.

RAY BUILDERS, INC., WATERVIEW OWNER LLC, CLIPPER EQUITY LLC, AND WATERVIEW DEVELOPER LLC,

Third Third-Party Plaintiffs,

against

HFL SERVICES INC.,

Third Third-Party Defendants.

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Based on the foregoing papers, defendant Millertime Construction LLC (Millertime)'s motion for summary judgment (Seq. 002) is decided as follows:

**Introduction and Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on February 9, 2022, when he tripped and fell in the permanent stairwell between the second floor and first floor of a new construction site known as 77 Commercial Street (Molina EBT at 40–43). It is undisputed that Ray Builders, Inc. (Ray) was contracted to build the premises, and that Ray sub-contracted High-Rise Safety (High Rise) to perform site safety services. High Rise sub-contracted Millertime. The sub-contractor offer letter to Millertime refers to the premises as “77 Commercial Street.”

Robert Miller, the owner of Millertime and site safety manager at the site, testified as follows: Mr. Miller daily inspected all areas of the job site (Miller EBT at 27–28). The premises was comprised of three parts which bore the following designations: “85” (floors 1–7 or 1–9); “87” (floors 9–top on the waterside of the building); and “77” (floors 7 or 8 through the roof) (*id.* at 78, 84). Despite the designations, the work of the trades overlapped throughout the building (*id.* at 100).

On the date of plaintiff's accident, Mr. Miller was notified of the accident by Fabian Campoverde, plaintiff's foreman (*id.* at 23–24, 44–45). Although there was a different site

safety manager assigned to the No. 85 portion of the premises, Mr. Miller responded to the accident as part of “performing his site safety manager duties” (*id.* at 95). Mr. Miller reported the accident in his own safety log (*id.* at 104, 112, 124) and reported the accident to the Department of Buildings in his capacity as site safety manager (*id.* at 54).

An incident report, purportedly prepared by Ray’s former administrative assistant Gladys Gonzalez, states that plaintiff’s fall occurred in “Stairwell G” and describes the location of the accident as 77 Commercial Street. No party identified which portion of the project Stairwell G was located at until Mr. Miller filed an affidavit, disclosed for the first time with this motion for summary judgment, claiming that Stairwell G is located in No. 85.

### Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant’s showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Since evidence must be considered in the light most favorable to the non-moving party, ambiguities in the evidence must be construed against the movant (*Siegel v Golub*, 286 AD2d 489 [2d Dept 2001]).

Millertime contends that it was only retained to serve as the site safety sub-contractor responsible for No. 77. Based on its contention that a different site safety sub-contractor was responsible for No. 85, and that plaintiff’s accident occurred on a stairwell located in No. 85, Millertime argues that it is not a proper Labor Law defendant and the claims against it should be dismissed.

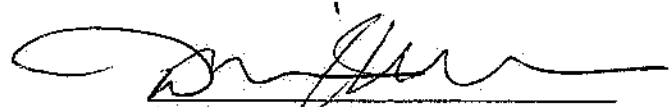
In opposition, multiple parties contend that there are material issues of fact as to whether Millertime was responsible for all of 77 Commercial Street, based on the sub-contractor offer letter and Mr. Miller’s own testimony about walking the premises, that he responded to the scene of plaintiff’s accident, and that he reported the incident to the New York City Department of Buildings. Furthermore, HFL Services Inc. (HFL) argues that the motion is premature because High Rise, the party that sub-contracted Millertime, has only recently appeared and has not yet been deposed. HFL also contends that the depositions of Ray’s superintendents Carlos Casteneda and Hector Casteneda are necessary to resolve the issue of Millertime’s authority and activity at the site.

In viewing the totality of the evidence, Millertime’s motion must be denied. When viewed in a light most favorable to the non-moving parties, the sub-contractor offer letter, Mr. Miller’s testimony about his activities at the site, and the incident report all indicate triable issues of material fact about the extent of Millertime’s authority and activities at the site. Millertime filed the instant motion before depositions had been completed and before the note of issue deadline on July 25, 2025, and before the deposition of High Rise, which may have clarified some of the ambiguities concerning the extent of Millertime’s contractual responsibilities.

**Conclusion**

Millertime’s motion for summary judgment (Seq. 002) is denied.

July 8, 2025  
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**DATE**

  
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**DEVIN P. COHEN**  
 Justice of the Supreme Court