

Yanes v 37th St. Holdings, LLC

2025 NY Slip Op 34128(U)

October 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 504181/2023

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 504181/2023
Mot. Cal. Date: 10-6-25
Mot. Seq. #: 1

-----X

JULIO CARRASCO YANES,

Plaintiff,

-against-

37TH STREET HOLDINGS, LLC, CONGREGATION
BEIS SHLOIME and RAY BUILDERS, INC.,

Defendants.

-----X

CONGREGATION BEIS SHLOIME and RAY
BUILDERS, INC.,

DECISION/ORDER

Third-Party Plaintiffs,

-against-

RELIABLE MASONRY CORP. d/b/a Y&Y CONCRETE
and Y&Y CONCRETE INC.,

Third-Party Defendants.

-----X

Y&Y CONCRETE INC. i/s/h/a RELIABLE MASONRY
CORP. d/b/a Y&Y CONCRETE,

Second Third-Party Plaintiff,

-against-

C&C CONCRETE INC.,

Second Third-Party Defendant.

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001

-----X

CONGREGATION BEIS SHLOIME and RAY BUILDERS, INC.,

Third-Third-Party Plaintiffs,

-against-

GWT ENTERPRISES INC.,

Third-Third-Party Defendant.

-----X

The following papers, which are e-filed with NYCEF as items 36-50, 58-69, 75-85, were read on this motion:

In this action to recover damages for personal injuries, plaintiff JULIO CARRASCO YANES moves pursuant to CPLR 3212, for an Order granting plaintiff summary judgment as to liability against defendants CONGREGATION BEIS SHLOIME and RAY BUILDERS. INC., pursuant to Labor Law §§ 240(1) and 241(6).

BACKGROUND

This action arises from a construction site accident that allegedly occurred on November 20, 2022, at premises located at 1360 36th Street, Brooklyn, New York. Plaintiff, JULIO CARRASCO YANES, an employee of Third-Party Defendant Y&Y CONCRETE INC, claims that he was injured while he and a co-worker were transporting four-wheeled container loaded with concrete and debris down an exterior ramp. The plaintiff was pushing the container while his co-worker was pulling it. The accident occurred when the front wheel of the container became caught in a two-inch gap between the ramp's metal plating, causing the container to tip over to the left and spill contents onto his right. The defendants in the action are the owner of the premises and the general contractor.

In support of the motion, the plaintiff submitted an affidavit from co-worker Patricio Lara Zumba, an eyewitness to the accident. The plaintiff never disclosed Mr. Zumba as an eyewitness

to the defendants when plaintiff responded to their initial discovery demands. He was first disclosed as a witness when this motion was filed. Mr. Zumba's affidavit account of the accident differs from the account given by the plaintiff. Mr. Zumba claims the metal wheelbase was "visibly damaged," whereas the Plaintiff testified he was not aware of any defects. Mr. Zumba also maintained that the ramp had scaffolding poles installed across it, a condition that Plaintiff failed to mention in his deposition, and which is not visible in the photographs submitted to the Court. Further, Plaintiff testified the container tipped to its left, while Mr. Zumba claims the container "crashed downward."

DISCUSSION

"CPLR 3212(f) permits a court to deny a motion for summary judgment where it appears that the facts essential to oppose the motion exist but cannot then be stated" (*Sepulveda v. Cammeby's Mgt. Co., LLC*, 119 A.D.3d 927, 927, 989 N.Y.S.2d 885; *see Bonilla v. Bangert's Flowers*, 132 A.D.3d 618, 619, 17 N.Y.S.3d 740; *Wesolowski v. St. Francis Hosp.*, 108 A.D.3d 525, 526, 968 N.Y.S.2d 181). "This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion" (*Baron v. Incorporated Vil. of Freeport*, 143 A.D.2d 792, 793, 533 N.Y.S.2d 143; *see Schlichting v. Elliquence Realty, LLC*, 116 A.D.3d 689, 690, 983 N.Y.S.2d 291; *Sepulveda v. Cammeby's Mgt. Co., LLC*, 119 A.D.3d 927, 989 N.Y.S.2d 885). "A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence . . ." (*Elfe v. Roman*, 219 A.D.3d 1304, 1306, 195 N.Y.S.3d 768 [internal quotation marks omitted]; *see CPLR 3212[f]*; *Gonzalez v. Goudiaby*, 177 A.D.3d 656, 658, 109 N.Y.S.3d 890).

Certainly, Mr. Zumba's deposition might lead to relevant evidence. The Court thus finds that plaintiff's motion for summary judgment is premature. Until the defendants have had the opportunity to take Mr. Zumba's deposition, this motion should not be decided.

Accordingly, is hereby

ORDERED that plaintiff's motion for summary judgment is denied, without prejudice to renewal following the completion of Mr. Zumba's deposition. The parties are directed to appear

in CCP on 12/3/25 to arrange for Mr. Zumba's deposition and to schedule all remaining discovery.

This constitutes the decision and order of the Court.

Dated: October 22, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
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