

**Cahuano v 2320 Coney LLC**

2025 NY Slip Op 35023(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 529982/2021

Judge: Devin P. Cohen

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**Supreme Court of the State of New York**  
**County of Kings**  
Part LL1M

**Index Number** 529982/2021  
**Seqs.** 006, 007

EDWIN WILFREDO SOPA CAHUANO,  
**Plaintiff,**  
against

2320 CONEY LLC, COOK EQUITIES LLC, RATAN REALTY  
L.L.C., ALL BOROUGH GROUP SERVICE INC., and  
RICHMOND CONSTRUCTION INC.,  
**Defendants.**

ALL BOROUGH GROUP SERVICE INC.,  
**Third-Party Plaintiffs,**  
against

**DECISION/ORDER**

RICHMOND CONSTRUCTION INC.,  
**Third- Party Defendant.**

ALL BOROUGH GROUP SERVICE INC.,  
**Second Third-Party Plaintiff,**  
against

JW SALINAS CORP.,  
**Second Third-Party Defendant.**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this motion,  
by reference to NYSCEF: 173-182, 187-200.

## **Introduction**

Upon the foregoing papers, All Borough Group Service Inc. (All Borough)'s motion to reargue (Seq. 006) and JW Salinas Corp. (Salinas)'s motion to re-argue (Seq. 007) are decided as follows:

## **Procedural Posture**

Plaintiff commenced this action to recover for damages that he claims to have sustained on October 5, 2021, when he tripped and fell while carrying rebar at a construction site. All Borough, the general contractor for the project, discontinued its third-party action against Richmond, the super-structure sub-contractor, when Richmond agreed to accept All Borough's tender. The owner of the premises, 2320 Coney LLC, is in default. A default judgment was issued on March 22, 2023. All Borough commenced a second third-party against Salinas, the concrete sub-sub-contractor. Salinas employed the plaintiff.

## **Facts**

The essential facts of plaintiff's accident are undisputed. On October 5, 2021, plaintiff was carrying five pieces of rebar which were each twenty to twenty-five feet long. Plaintiff was carrying the rebar bundle across an uncovered rebar grid on the top floor of the new construction, and he had completed this trip multiple times that day. A yellow extension cord was laying across the rebar grid. An authenticated photograph of the site is in the record depicting the rebar grid and the yellow extension cord. Plaintiff claims that he tripped over the electrical cord with his right foot and then could not "get up" with his left foot because of loose plumbing sleeves, which plaintiff calls "black pipes," scattered on the decking (Sopa EBT at 18). Yi Liu (All Borough representative) and Amnider Singh (Richmond representative) confirmed that these black pipes were plumbing sleeves (Singh EBT at 81; Liu EBT at 87).

On March 24, 2025, this court issued an order granting plaintiff summary judgment on his Labor Law § 241 (6) claim as predicated on a violation of Rule 1.7 (e) (2) and otherwise denying the motion, granting defendants' All Borough and Richmond Construction Inc.'s motion to the extent of dismissing some of plaintiff's claims and otherwise denying the motion, and granting Salinas' motion to the extent of dismissing All Borough's breach of contract claim and otherwise denying the motion. Now, All Borough and Salinas move to re-argue portions of that order. Notably, neither party seeks to re-argue that portion of the motion granting plaintiff summary judgment on his Labor Law § 241 (6) claim. All Borough seeks re-argument of that portion of the decision deeming its defense of comparative fault abandoned, and Salinas seeks re-argument of the portion of the decision denying dismissal of All Borough's indemnification claims.

### Analysis

To establish a basis for re-argument, defendant must show that this court overlooked or misapprehended a point of law or fact, without resorting to arguments different from those originally stated (*NYCTL 1998 1 Tr. v Rodriguez*, 154 AD3d 865, 865 [2d Dept 2017]; *Rodriguez v Gutierrez*, 138 AD3d 964, 966-67 [2d Dept 2016]).

#### **All Borough's Motion to Reargue**

All Borough contends that the court overlooked the sentence in its affirmation stating that "plaintiff has failed to demonstrate a basis to have defendants' Affirmative Defenses dismissed as a matter of law. These defenses are viable and should survive this motion" (aff. at ¶ 9). All Borough argues that this, plus its identification of facts like the bright color of the extension cord, are sufficient to preserve its comparative fault arguments for the time of trial. These arguments are unavailing. An attorney's bald legal conclusions contained in an affirmation in

opposition are, alone, insufficient to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). All Borough did not mention comparative fault or otherwise allege that plaintiff was a proximate cause of his accident in either its opposition to plaintiff's motion or its own motion for summary judgment. Additionally, unlike the other legal conclusions asserted at the beginning of All Borough's affirmation in opposition, there was not a corresponding subsection containing substantive argument later in the document concerning the viability of All Borough's affirmative defenses, including the affirmative defense of comparative fault. Therefore, upon a review of the record, the court concludes that it neither misapprehended the law or the facts concerning All Borough's motion, and re-argument is denied.

#### **Salinas' Motion to Reargue**

Salinas has demonstrated its entitlement to summary judgment dismissing the indemnification claims against it. Although neither a copy of the Workers' Compensation Board determination or a copy of Salinas' Workers' Compensation certificate of insurance are in the record, Salinas correctly argues that plaintiff's Employee Claim C-3 is annexed as an exhibit to plaintiff's second deposition transcript. That form identifies Salinas as plaintiff's employer, and plaintiff testified he did receive Workers' Compensation Benefits (Sopa second EBT at 72). Taken together, this evidence is sufficient to establish that Salinas provided plaintiff with Workers' Compensation Coverage and is entitled to the protections of Workers' Compensation Law § 11. Although plaintiff alleged a "head injury" in the bill of particulars, there is no evidence in the record indicating that plaintiff sustained a "grave injury" as defined by the Workers' Compensation Law, and All Borough's speculation on that issue is insufficient to raise a triable issue of material fact (*Sanchez v City of New York*, 190 AD3d 999 [2d Dept 2021]).

**Conclusion**

All Borough's motion (Seq. 006) is denied.

Salinas' motion (Seq. 007) is granted and, upon re-argument, Salinas' motion to for summary judgment is granted.

This constitutes the decision and order of the court.

December 12, 2025

**DATE**



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