

Gonzalez-Flores v 368 Third Owners LLC

2026 NY Slip Op 31374(U)

April 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 508305/2021

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

Index No.: 508305/2021

**SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY: PART 13**

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CARLOS E. GONZALEZ-FLORES,

Plaintiff,

-against-

Cal. No.: 6 (MSQ No.: 8)

Cal. No.: 8 (MSQ No.: 11) (02/03/2026)

Index No.: 508305/2021

368 THIRD OWNERS LLC, MINRAV DEVELOPMENT
INC., CM AND ASSOCIATES CONSTRUCTION
MANAGEMENT LIMITED LIABILITY COMPANY,
ARSENAL SCAFFOLD, INC.,

DECISION & ORDER

Defendants.

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368 THIRD OWNERS LLC, MINRAV DEVELOPMENT
INC., CM AND ASSOCIATES CONSTRUCTION
MANAGEMENT LIMITED LIABILITY COMPANY,

Third-Party Plaintiffs,

-against-

MCWI, INC. d/b/a WESTSIDE WINDOWS AND DOORS and
ARSENAL SCAFFOLD, INC.,

Third-Party Defendants.

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368 THIRD OWNERS LLC, MINRAV DEVELOPMENT
INC., CM AND ASSOCIATES CONSTRUCTION
MANAGEMENT LIMITED LIABILITY COMPANY,

Second Third-Party Plaintiffs,

-against-

S.T.M.T. CONSTRUCTION CORP.,

Second Third-Party Defendant.

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MCWI, INC. d/b/a WESTSIDE WINDOWS AND DOORS,

Third Third-Party Plaintiff,

-against-

S.T.M.T. CONSTRUCTION CORP.,

Third Third-Party Defendant.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review Defendants/Third-Party Plaintiffs 368 THIRD OWNERS LLC (hereafter “368 Third Owners”), MINRAV DEVELOPMENT INC. (hereafter “Minrav”), CM AND ASSOCIATES CONSTRUCTION MANAGEMENT LIMITED LIABILITY COMPANY (hereafter “CMA”) (hereafter collectively: the “368 Defendants”) motion to restore the 368 Defendants’ motion sequence 8 for summary judgment (MSQ No.: 11); NYSCEF Doc. Nos.: 452 - 459, and for and order, pursuant to CPLR 3212: (i) dismissing Plaintiff’s Labor Law § 200/common law negligence claims and all cross and counter-claims, with prejudice; (ii) granting 368 Third Owners summary judgment on their claims for indemnification and breach of contract as against Defendant/Third-Party Defendant ARSENAL SCAFFOLDING (hereafter “Arsenal”); (iii) granting Minrav summary judgment over and against Arsenal on Minrav’s claims for indemnification and breach of contract; (iv) granting CMA summary judgment over and against Arsenal on its claims for indemnification and breach of contract; (v) granting the 368 Defendants summary judgment over and against MCWI, INC. d/b/a WESTSIDE WINDOWS AND DOORS (hereafter “MCWI”) on the 368 Defendants’ third-party claims against MCWI (MSQ No.: 8); NYSCEF Doc. Nos.: 298 – 331; 373 – 379; 406 – 447.

Background:

The action arises from a personal injury allegedly sustained by Plaintiff on July 23, 2022. Plaintiff was allegedly injured when the hoist he was riding in, allegedly stopped abruptly between the 18th and 19th floors at the premises located at 368 Third Avenue, New York, New York. At the time of the alleged incident, Plaintiff was working as a laborer on the construction project for second/third party Defendants S.T.M.T. Construction Corp. (hereafter “S.T.M.T”). Plaintiff was taking his lunch break and was heading to the ground floor of the building located at 368 Third Avenue. Plaintiff was accompanied by two other unknown individuals on the hoist. Plaintiff’s accident was allegedly due to the hoist malfunctioning. ARSENAL’s “Hoist Service and Maintenance Report” of the accident list the malfunction as a “fault on drive.” (NYSCEF DOC NO. 330). The report clarifies that this issue is linked to the “drive show saturation fault.” A mechanical/technical issue.

The construction site was owned by 368 THIRD OWNERS. MINRAV was the developer of the project. MINRAV hired CMA as the general contractor and/or construction manager acting as an agent of the owner for the project. Plaintiff was employed as a laborer by S.T.M.T. Plaintiff's direct supervisor was employed by MCWI.

Upon due consideration of the papers filed in these matters, and after oral argument held on September 30, 2025, and February 3, 2026, it is

ORDERED that, the **368 Defendants'** motion to restore (MSQ No.:11) is hereby GRANTED and as a result the **368 Defendants'** motion for summary judgment, **motion sequence 8**, is deemed fully restored, briefed and submitted. It is further

ORDERED that, that part of motion sequence 8 in which **368 Third Owners** moves for summary Judgment seeking dismissal of Plaintiff Carlos E. Gonzalez-Flores' Labor Law § 200/common law negligence claims and all cross and counterclaims is DENIED **as academic**, as this Court had previously granted Plaintiff partial summary judgment on liability as to Labor Law 240(1) (see Court's decision and order filed March 26, 2025:NYSCEF Doc. No.: 216) (*see also Vines v Judlau Contr., Inc.*, 238 AD3d 557 [1st Dept 2025]); and it is further

ORDERED that, that part of motion sequence 8 in which **368 Third Owners** seek summary Judgment as against Defendant/Third-Party Defendant Arsenal is GRANTED, and **368 Third Owners** are awarded judgment against Arsenal on **368 Third Owners'** claims for contractual indemnification and breach of contract; and it is further

ORDERED that, that part of motion sequence 8 in which **Minrav** seeks summary judgment as against Defendant/Third-Party Defendant Arsenal is GRANTED, and **Minrav** is awarded judgment against Arsenal on their claims for contractual indemnification and breach of contract; and it is further

ORDERED that, part of motion sequence 8 in which CMA seeks summary Judgment as against Defendant/Third-Party Defendant Arsenal on CMA's claim for contractual indemnification and breach of contract is DENIED; it is further

ORDERED that, that part of the **368 Defendants'** motion seeking summary judgment as against Defendant/Third-Party Defendant MCWI on 368 Defendants' third-party claims for contractual indemnification and breach of contract is DENIED; it is further

ORDERED that, counsel for the movants is directed to serve a copy of this Decision and Order with Notice of Entry upon the parties within 15 days of the date herein. It is further

ORDERED that, all applications not specifically addressed herein are denied.

This constitutes the decision and order of this Court.

Dated: April 6, 2026¹

ENTER:

R. V. BARRY

HON. RUPERT V. BARRY, J.S.C.

¹ On the record in court, this Court on September 30, 2025, had denied as premature, Defendants' motion sequence 8.