Wei Hao Zeng v Madison Intl. Realty, LLC
2026 NY Slip Op 31526(U)
April 10, 2026
Supreme Court, Kings County
Docket Number: Index No. 507295/2021
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10th day of APRIL, 2026

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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WEI HAO ZENG and MEILING CHEN,

Plaintiff,

-against-

MADISON INTERNATIONAL REALTY, LLC, MIR QUEENS PLACE ASSOCIATES, LLC, CZS GROUP, LLC, CZS GROUP, LLC d/b/a TERIYAKI ONE-JAPANESE GRILL, and TERIYAKI ONE-JAPANESE GRILL,

Defendants,

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Decision and Order
Mot. Seq. No. 6

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CZS GROUP, LLC,

Third-party Plaintiff,

-against-

BUILT NYG, INC,

Third-party Defendants,

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The following *papers NYSCEF* Doc #'s 109 to 200 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	109-130
Opposing Affidavits (Affirmations)	152-155; 159; 160; 167
Reply Affidavits	189-200

After having come before the Court and the court having heard Oral Argument on June 4, 2025 and after review of the foregoing papers the court finds as follows:

Plaintiff moves for an order pursuant to CPLR §3212 and NYS Labor Law §§ 200,

241(6), granting plaintiffs summary judgment against defendants, Madison International Realty, LLC, MIR Quens Place Associates, LLC and CZS Group, LLC, and for such other relief as this court may deem just and proper.

FACTS

This action arises from an where plaintiff was instructed to use a gasoline powered circular saw to cut a channel in the concrete floor in a workspace that was unventilated. Following the use of the subject machine, the plaintiff collapsed and struck his head, fracturing his skull. It is undisputed the workspace had only one (closed) double door, leading into the shopping mall, but no exterior windows and no temporary artificial ventilation system in place. Plaintiff was taken to the hospital by EMS who reported an "altered mental state"; "altered level conscious"; "skin color not normal pale"; "unresponsive" and "unconscious". In addition to the foregoing, the EMT report notes that they saw vomit on his shirt and that he vomited in the ambulance (another C0 poisoning symptom). A measure of Carboxyhemoglobin (COHb) is taken to determine the amount of carbon monoxide that forms in a patient's red blood cells when carbon monoxide is inhaled. A measure indicating poisoning is a number greater than 20%. Plaintiff's level, measured at the hospital was 25.4. See Page 2 of the Elmhurst Neurosurgery Discharge Summary NYSCEF Doc no. 127 notes: "carboxyhemoglobin venous 25.4"

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party

opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR 3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.* A motion for summary judgment is a drastic measure and to be used sparingly (*Wanger v. Zeh,* 45 Misc2d 93 [Sup Ct, Albany County], aff'd 26 AD2d 729 [3rd Dept 1965]). Summary judgment is proper when there are no issues of triable fact (*Alvarez v. Prospect Hospital,* 68 NY2d 320, 324 [1986]). Issue finding rather than issue determination is its function (*Sillman v. Twentieth Century Fox Film Corp.,* 3 NY2d 395 [1957]). The evidence will be construed in the light most favorable to the one moved against (*Weiss v. Garfield,* 21 AD2d 156 [3d Dept 1964]). The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Zuckerman v. City of New York,* 49 NY2nd 557 [1990]). Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v. Algaze,* 84 NY2d 1019 [1995]).

Labor Law § 200 & Common Law Negligence

"Labor Law 200(1) is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work" (*Ortega v. Puccia*, 57 AD3d 54, 60, 866 NYS2d 323). "[W]hen a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work" (*id.* at 61, 866 NYS2d 323). *Goodwin v. Dix Hills Jewish Center,* 144 AD3d 744, 41 NYS3d 104, 2016 NY Slip Op. 07293. "A defendant has the authority to supervise or control the work for purposes of Labor Law 200 when that defendant bears the responsibility for the manner in which the work is performed" (*Ortega v. Puccia*, 57 AD3d at 62, 866 NYS2d 323).

Labor Law 241(6)

"**Labor Law 241(6)** imposes a nondelegable duty of reasonable care upon an owner or general contractor to provide reasonable and adequate protection to workers, and a violation of an explicit and concrete provision of the Industrial Code by a participant in the construction project constitutes some evidence of negligence for which the owner or general contractor may be held vicariously liable ." (*Fusca v. A & S Construction,* LLC, 84 AD3d 1155, 1156 [2d Dept 2011]).

In the present case the plaintiff alleges New York State Industrial Code §23-10.4 was violated which states: "Enclosed spaces. No stationary internal combustion engine shall be operated under any conditions which allow introduction of its exhaust gases into any occupied enclosed space. The operation of other internal combustion engines within such a space is prohibited except for the necessary entrance and departure of vehicles and except when such space is so ventilated as to assure an atmosphere free from

exhaust gases in a concentration tending to injure health." (12 NYCRR 23-10.4.)

In the present case summary judgement must be denied, issues of fact including but not limited to whether the plaintiff's injuries occurred as a result of being exposed to carbon monoxide from being required to operate a gas powered circular saw in a unventilated room.

Accordingly, plaintiff's motion for summary judgment is hereby denied as questions of fact exist, for the reasons stated above.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
April 10, 2026

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ