

<b>Reyes-Guevara v 722 Metro. LLC</b>
2026 NY Slip Op 31546(U)
April 14, 2026
Supreme Court, New York County
Docket Number: Index No. 151479/2020
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

HALMAR REYES-GUEVARA,  
Plaintiff,

INDEX NO. 151479/2020

MOTION DATE 04/02/2026

MOTION SEQ. NO. 007 008 009

- v -

722 METROPOLITAN LLC, GOTHAM NEW YORK  
LLC, ALBA SERVICES, INC., CAPSTONE CONTRACTING  
CORPORATION,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

722 METROPOLITAN LLC, GOTHAM NEW YORK LLC  
Plaintiff,

Third-Party  
Index No. 595639/2020

-against-

ALBA SERVICES, INC., CAPSTONE CONTRACTING  
CORPORATION

Defendant.

-----X

722 METROPOLITAN LLC, GOTHAM NEW YORK LLC  
Plaintiff,

Second Third-Party  
Index No. 595118/2022

-against-

OAK PARK ENTERPRISES INC., FRIENDLY HAND LABOR  
CORP.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 235, 236

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 275, 276, 277, 278, 279, 280, 314

were read on this motion to/for JUDGMENT – SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 315, 316, 317, 318, 319, 320, 321, 322

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Motion Sequence Numbers 007 008 and 009 are consolidated for disposition.

Defendants 722 Metropolitan LLC and Gotham New York LLC (“Moving Defendants”)’s motion (MS007) for summary judgment dismissing plaintiff’s complaint and for contractual indemnification against defendant Alba Services, Inc. (“Alba”) is denied. These same defendants’ motion for summary judgment seeking contractual indemnification (MS008) against Alba is denied. These same defendants’ motion (MS009) to amend their verified answer to include additional affirmative defenses and counterclaims is denied.

**Background**

In this Labor Law action, plaintiff contends that he was working for second third-party defendant Capstone Contracting, Corp. (“Capstone”) and installing rebar on the first floor when he allegedly fell off of a rebar storage horse while removing a piece of rebar stacked there.

**Plaintiff’s Affirmative Claims**

The judge previously assigned to this matter granted plaintiff’s motion for summary judgment on his Labor Law § 240(1) claim without opposition (NYSCEF Doc. No. 144). Moving Defendants then sought to vacate that decision and the prior judge denied it (NYSCEF Doc. No. 284). In this Court’s view, that renders (as plaintiff points out) the branch of Moving Defendants’ motion seeking to dismiss plaintiff’s complaint as moot as plaintiff already has judgment as to liability.

### **Contractual Indemnification**

In both MS007 and 008, Moving Defendants seek contractual indemnification against Alba. There is no dispute that Alba entered into a subcontract with defendant Gotham New York, LLC. However, the Court denies the identical requests for relief found in these motions because Moving Defendants did not meet their prima facie burden. For some reason, Moving Defendants did not include pincites for their citations to the key exhibits in their affirmations in support (NYSCEF Doc. Nos. 196 at 24-25 and 241 at 10). For instance, Moving Defendants argue that “ALBA subcontractor [sic] the rebar installation portion of the work it was contracted to perform under the ALBA/GOTHAM contract to CAPSTONE. See Deposition of Andrew Horan, Exhibit ‘Q’” and “Plaintiff was engaged in the rebar installation subcontracted by ALBA to CAPSTONE on the date of loss. Exhibit ‘R’” (NYSCEF Doc. No. 196 at 24). It is not this Court’s role to search within exhibits that are hundreds of pages to find testimony that supports Moving Defendants’ position. A generalized citation to a deposition transcript is not sufficient to meet their burden on a motion for summary judgment. This Court has little choice but to deny these portions of the respective motions.

### **MS009**

In this motion, Moving Defendants seek to amend their answer to include a counterclaim and affirmative defense of fraud. The Court denies this motion for several reasons. First, Moving Defendants failed to satisfy the portion of CPLR 3025(b) that requires “Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” They did not include a red-lined version or any other version clearly showing the changes.

Second, as noted above, the prior judge granted summary judgment to plaintiff on his Labor Law § 240(1) claim and denied Moving Defendants’ motion to vacate that decision (which was decided without opposition). Therefore, it is simply too late for Moving Defendants to assert an affirmative defense or a counterclaim based on a theory that, if proven, would bar plaintiff’s recovery in its entirety.

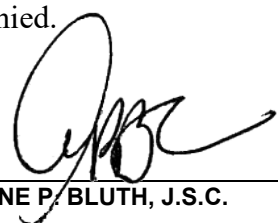
And, finally, the Court finds that the instant motion is untimely and therefore prejudicial. The fact is that the evidence Moving Defendants cite as proof that plaintiff “made up” the accident was known to Moving Defendants years ago. They reference deposition testimony from January and February 2023 and records dated well prior to those deposition dates. And yet they waited until January 9, 2026 to make the instant motion to amend despite the fact that the note of issue was filed on February 14, 2024 and multiple summary judgment motions were filed prior to the filing of this motion. In other words, making this motion as this case nears trial at best suggests an oversight or, at worst, gamesmanship. No matter where on that motive spectrum it falls, the Court finds that it is objectively far too late to permit such an amendment even if the Court could overlook the procedural issues discussed above.

Accordingly, it is hereby

ORDERED that all three motions, MS007, 008 and 009, are denied.

4/14/2026

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE