

Morgenthaler v Coney Is. Assoc. Phase I LLC
2026 NY Slip Op 31587(U)
March 31, 2026
Supreme Court, Kings County
Docket Number: Index No. 511780/2020
Judge: Saul Stein
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At IAS PART 17 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, Borough of Brooklyn, City and State of New York, on the 31st of March, 2026

PRESENT: HON. SAUL STEIN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: IAS PART 17

STEVEN MORGENTHALER,

Plaintiff,

-against-

CONEY ISLAND ASSOCIATES PHASE I LLC, L&M BUILDERS GROUP, LLC, CONEY ISLAND ASSOCIATES, 1 AFFORDABLE, LLC, CONEY ISLAND ASSOCIATES MODERATE LLC, CONEY ISLAND ASSOCIATES 1 HRA LLC, CONSTRUCTION REALTY SAFETY GROUP, INC.,

Defendants.

CONEY ISLAND ASSOCIATES PHASE I LLC, L&M BUILDERS GROUP, LLC, CONEY ISLAND ASSOCIATES 1 AFFORDABLE, LLC, CONEY ISLAND ASSOCIATES MODERATE LLC, CONEY ISLAND ASSOCIATES 1 HRA LLC,

Third-Party Plaintiffs,

-against-

R&M REPAIRS AND MAINTENANCE, INC.,

Third-Party Defendant.

CONEY ISLAND ASSOCIATES PHASE I LLC, L&M BUILDERS GROUP, LLC, CONEY ISLAND ASSOCIATES 1 AFFORDABLE, LLC, CONEY ISLAND ASSOCIATES MODERATE LLC, CONEY ISLAND ASSOCIATES 1 HRA LLC,

Second Third-Party Plaintiffs,

-against-

CONSTRUCTION REALTY SAFETY GROUP, INC.,

Second Third-Party Defendant.

Pursuant to CPLR 2219 (a), the following papers were read on this motion:
NYSCEF Doc Nos. 179-190, 194-197, 205, 206-217, 218-224, 227-228, 229

Plaintiff Steven Morgenthaler moves for partial summary judgment on liability on his Labor Law §241(6) and Labor Law §200 causes of action against defendants Coney Island Associates Phase I LLC, Coney Island Associates 1 Affordable, LLC, Coney Island Associates Moderate LLC, and Coney Island Associates 1 HRA LLC (hereinafter, collectively, “Coney Island”) and L&M Builders Group, LLC (“L&M”) (Mot. Seq. No. 8). Defendant/third-party defendant Construction Realty Safety Group (“CRSG”) moves for summary judgment and dismissal of any claims or cross-claims against it (Mot. Seq. No. 9). Defendants/third-party plaintiffs/second third-party plaintiffs Coney Island and L&M cross-move for summary judgment and dismissal as to plaintiff’s Labor Law §241(6), Labor Law §200 and common law negligence causes of action (Mot. Seq. No. 10). After review of the papers and oral argument in this matter, the motions are decided as follows: plaintiff’s motion (Seq. No. 8) is **GRANTED**; CRSG’s motion (Seq. No. 9) is **GRANTED**; Coney Island and L&M’s cross-motion (Seq. No. 10) is **DENIED**.

Plaintiff’s deposition testimony satisfied his *prima facie* burden to demonstrate that his injuries were caused by slipping on ice and debris, which was present on the floor of the subject construction site, in a bathroom where construction work was being performed, in violation of 12 NYCRR 23-1.7(d) and 12 NYCRR 23-1.7(e)(2). In opposition, Coney Island and L&M¹ failed to raise a triable issue of fact. Coney Island and L&M argue that 12 NYCRR 23-1.7(d) does not apply because the accident occurred in an open area and not on a defined walkway, passageway or path. This argument is without merit. 12 NYCRR 23-1.7(d) provides that “[e]mployers shall not suffer

¹ Third-Party Defendant R&M Repairs and Maintenance, Inc. (“R&M”) also filed opposition to plaintiff’s motion for summary judgment, even though, as R&M conceded, plaintiff did not move for summary judgment as against R&M. On November 10, 2025, R&M filed a motion for summary judgment as against plaintiff and Coney Island and L&M (Mot. Seq. No. 11), and Coney Island and L&M filed a motion for summary judgment as against R&M (Mot. Seq. No. 12). These motions were decided in part on February 26, 2026 (see NYSCEF Doc. Nos. 284 and 285).

or permit any employees to use a **floor**, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing” (emphasis added). Here, plaintiff’s accident occurred on a floor. Additionally, the cases cited by Coney Island and L&M are distinguishable, as they involve instances where the accident occurred outside the construction site. Here, plaintiff alleges that he was injured in the bathroom, where construction work was being performed, which “places the area within the construction context as contemplated under Labor Law § 241(6)” (*Gancarz v Brooklyn Pier 1 Residential Owner, L.P.*, 190 AD3d 955, 957 [2d Dept 2021]; see also *Bazdaric v Almah Partners LLC*, 41 NY3d 310 [2024]; *McCraw v United Parcel Serv.*, 263 AD2d 499 [2d Dept 1999]).

Coney Island and L&M also argue that the crushed gravel upon which plaintiff alleges he slipped was either part of the surface of the ground, or an integral part of the work being performed, and therefore not accumulated dirt or debris pursuant to 12 NYCRR 23-1.7(e)(2). However, plaintiff’s deposition testimony *prima facie* demonstrated that the gravel or debris emanated from demolition or other construction work, had no purpose for any of the work being done, was not properly swept and was present all around the job site. In opposition, Coney Island and L&M raise no material question of fact, solely relying on plaintiff’s concession that the gravel may have emanated from floor planks installed at the job site, which would not insulate Coney Island and L&M from violating 12 NYCRR 23-1.7(e)(2) (see *Murphy v 80 Pine, LLC*, 208 AD3d 492 [2d Dept 2022]; *Aragona v State*, 147 AD3d 808 [2d Dept 2017]; *Lopez v New York City Dept. of Env’tl. Protection*, 123 AD3d 982 [2d Dept 2014]). Coney Island and L&M offered no explanation as to why this gravel was not cleaned up for many days. Additionally, Coney Island and L&M’s

mere speculation, without any support, that the gravel was needed for the floor in the future does not raise any genuine question of fact.

Coney Island and L&M also argue that plaintiff should be denied summary judgment due to an alleged [unsworn] handwritten statement by plaintiff stating that the injury occurred while removing a tub, without mentioning anything about ice, gravel or debris on the job site floor. Plaintiff denied authoring or signing this statement and argued that the statement is inadmissible. Defendants' arguments fail as this statement is inadmissible based upon the failure to lay a proper foundation for the unsworn, handwritten statement (*see Yassin v Blackman*, 188 AD3d 62 [2d Dept 2020]; *Pena v KST Trucking, Inc.*, 206 AD3d 1007 [2d Dept 2022]).

Furthermore, even if this statement was authored by plaintiff and even if admissible, it would not render plaintiff's deposition testimony inconsistent, only incomplete, which is not dispositive (*see Lourenco v City of New York*, 228 AD3d 577 [1st Dept 2024]; *Piedra v 111 W. 57th Prop. Owner LLC*, 219 AD3d 1235 [1st Dept 2023]; *Lin v 100 Wall St. Prop. L.L.C.*, 193 AD3d 650 [1st Dept 2021]). *Piedra* and *Lin* are instructive as they involve situations where a plaintiff reported to a supervisor or foreman that he fell without mentioning any dangerous conditions. The Court held that this initial lack of detail was not inconsistent with, nor detracted from the credibility of, the deposition testimony which more fully described the circumstances explaining why the accident occurred.

Accordingly, plaintiff's motion for summary judgment as against Coney Island and L&M pursuant to Labor Law §241(6) is granted (*see Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]; *Song v CA Plaza, LLC*, 208 AD3d 760 [2d Dept 2022]; *Reynoso v Bovis Lend Lease LMB, Inc.*, 125 AD3d 740 [2d Dept 2015]). Thus, the Court need not reach the issue of Coney Island and L&M's alleged violation of Labor Law §200. Moreover, in light of the above, Coney

Island and L&M's cross-motion is denied. Similarly, the remaining undecided portion of R&M's motion for summary judgment as against plaintiff (Seq. No. 11) is also denied.

The portions of defendant CRSG's motion seeking summary judgment and dismissal of plaintiff's claims for negligence, violation of Labor Law §200, Labor Law §240 and Labor Law §241(6), and Coney Island and L&M's claim for contribution, are granted without opposition. Coney Island and L&M solely opposes the portion of CRSG's motion seeking summary judgment of the contractual and common law indemnification claims. The deposition testimony of CRSG's site safety manager has *prima facie* demonstrated that CRSG did not commit any negligence contributing to the subject accident, nor that CRSG possessed or exercised any authority to direct or supervise the work giving rise to the injury. In opposition, Coney Island and L&M failed to raise any question of fact to the contrary. Thus, the portion of CRSG's motion seeking summary judgment dismissal of the common law indemnification claim is granted (*see McCarthy v Turner Const., Inc.*, 17 NY3d 369 [2011]; *Debenedetto v Chetrit*, 190 AD3d 933 [2d Dept 2021]; *Shaughnessy v Huntington Hosp. Ass'n*, 147 AD3d 994 [2d Dept 2017]).

Coney Island and L&M argue that even if CRSG did not act negligently, the indemnification clause in its contract with CRSG (*see* NYSCEF Doc. No. 183) imparted a reasonable performance standard with which CRSG may not have complied. However, while the terms of the indemnification clause obligated CRSG to indemnify Coney Island and L&M "from and against any and all liability... arising from or in connection with the reasonable performance of the Services furnished" this was "only to the extent that such claim is caused in whole or in part by any negligent act or omission or breach of this Agreement." Thus, contrary to Coney Island and L&M's argument, the indemnification clause did contain a negligence trigger.

Moreover, the deposition testimony of CRSG's site safety manager demonstrates that CRSG met its *prima facie* burden to demonstrate that it reasonably performed its service obligations under the agreement. Coney Island and L&M set forth no contrary facts, relying on speculation that the mere occurrence of the accident raises a question of fact as to CRSG's reasonable performance under the contract, without demonstrating any act or omission by CRSG constituting a breach. Accordingly, the portion of CRSG's motion seeking summary judgment on the contractual indemnification claim is granted, and CRSG's motion is granted in its entirety. It is therefore

ORDERED that plaintiff's motion (Seq. No. 8) is **GRANTED**; and it is further

ORDERED that CRSG's motion (Seq. No. 9) is **GRANTED**; and it is further

ORDERED that Coney Island and L&M's cross-motion (Seq. No. 10) is **DENIED**; and it is further

ORDERED that the remaining portion of R&M's motion (Seq. No. 11) is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: March 31, 2026

ENTER:



HON. SAUL STEIN, J.S.C.