

Mattura v St. Marks Ave. Prop., LLC

2026 NY Slip Op 31629(U)

April 10, 2026

Supreme Court, Kings County

Docket Number: Index No. 526548/2021

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

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.

-----X
RICHARD MATTURA,

Plaintiff,

-against-

Index No.: 526548/2021
Decision and Order
Mot. Seq. No. 4 & 5

ST. MARKS AVENUE PROPERTY, LLC and
BROOKSTONE DEVELOPERS, LLC,,

Defendants,

-----X
The following papers NYSCEF Doc #'s 56 to 89 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	56-66; 60-76
Opposing Affidavits (Affirmations) _____	80, 81, 90-99
Reply Affidavits _____	82, 89

After having come before the Court and the court having heard Oral Argument on July 16, 2025 and after review of the foregoing papers the court finds as follows:

Defendant, ST. MARKS AVENUE PROPERTY LLC ("SMAP"), moves this court for an order: (1) pursuant to CPLR §3212 granting summary judgment to SMAP and dismissing the complaint and all cross claims as there are no triable issues of fact sufficient to defeat this motion; (2) directing the Clerk of the Court to enter judgment in favor of the defendant and against the plaintiff with statutory costs and disbursement. (MS#4). Defendant Brookstone developers, LLC also move this court for an order pursuant to (a) pursuant to C.P.L.R. § 3212(1), granting summary judgment and

dismissing plaintiff's Complaint in its entirety as against BROOKSTONE DEVELOPERS, LLC., with prejudice. (MS#5). Plaintiff opposes both motions.

FACTS

This action arises from an incident on May 10, 2021 where plaintiff was a maintenance director with Crown Heights Nursing and Rehabilitation Center located at 810 St. Marks Avenue, Brooklyn, New York 11213. It is alleged plaintiff "stepped on a piece of sheetrock" with "his left foot" and "immediately started hopping on the other leg, jumping around." See, NYSCEF Doc. No 53, p.p. 64: 17-24; 65: 5-8; 66: 13-25; 67: 1-3; 69: 15-17. Specifically, plaintiff was walking in the dining room where demolition was going on and felt something puncture their foot. It was then alleged plaintiff checked and found out that it was a nail sticking out the bottom of their shoe. Plaintiff then took the shoe off to check it and saw the puncture in the middle of their foot with blood. See, NYSCEF DOC NO. 52, p. 7. It is also alleged by plaintiff there were ladders, tools, and debris on the floor.

It is undisputed that after the occurrence, partition walls were installed in the dining room to prevent people from entering. It is undisputed, on the date of incident SMAP was the owner of the PREMISES. SMAP, as Landlord, leased the PREMISES to CNR, as Tenant, through a LEASE. According to the LEASE, SMAP retained the right to enter and inspect the PREMISES, and to make repairs: "[the Landlord – N.A.] may enter the Premises at reasonable times to examine the Premises and make repairs, alterations, improvements or addition, which shall not be construed or deemed to be a forcible or unlawful entry." See, NYSCEF Doc. No. 61, §13. On May 10, 2021, Defendant BROOKSTONE DEVELOPPERS, LLC ("BROOKSTONE"), the general

contractor hired by SMAP, was performing demolition work at the PREMISES. Demolition work included the dining room and adjacent bathrooms.

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 NY2d 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).


In the present case, defendants, have failed to establish their prima facie entitlement to judgment as a matter of law dismissing the causes of action alleging violations of Labor Law 200 and common-law negligence insofar as asserted against them because there is a question of fact as to whether they had the authority to

supervise or control the manner in which they, performed its work, whether they had notice of the condition or whether they created the condition (*see Allan v. DHL Exp. (USA), Inc.*, 99 AD3d 828, 952 NYS2d 275; *Comes v. New York State Elec. & Gas Corp.*, 82 NY2d 876, 877, 609 NYS2d 168, 631 NE2d 110; *Russin v. Louis N. Picciano & Son*, 54 NY2d 311, 317, 445 NYS2d 127, 429 NE2d 805; *Pilato v. 866 U.N. Plaza Assoc., LLC*, 77 AD3d at 646, 909 NYS2d 80; *Jenkins v. Walter Realty, Inc.*, 71 AD3d 954, 898 NYS2d 56; *Enos v. Werlatone, Inc.*, 68 AD3d 712, 888 NYS2d 902; *Ortega v. Puccia*, 57 AD3d at 62–63, 866 NYS2d 323). The general contractor has a non-delegable duty of safety to all those lawfully traversing the work area. In addition, even an out of possession land lord has a non-delegable duty. This non delegable duty even absent knowledge of the project on behalf of the owner- remains intact today *Sanchez v. Walton Avenue Realty Associates, LLC*, 215 A.D. 3d 506, 186 N.Y.S. 3d 203 (1st Dep't. 2023); *Duffield v. Will's Equipment Repair*, 55 A.D. 3d 1365, 864 N.Y.S. 2d 615 (4th Dep't. 2008). There are questions of fact including but not limited to whether the construction site failed to post warnings signs of the condition, whether the landlords right to reentry referenced above implies a duty on the owner as well.

Accordingly, both defendants' motions for summary judgment (MS#4 & MS#5) are hereby denied in their entirety 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

2026 APR 13 A 9:24
 KINGS COUNTY CLERK
 FILED