

Lora v Infinity Contr. Servs., Corp.

2026 NY Slip Op 31736(U)

April 16, 2026

Supreme Court, Kings County

Docket Number: Index No. 509370/2025

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 16th day of April 2026

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

ARJELNIS SALAZAR LORA,

Plaintiff(s),

-against-

INFINITY CONTRACTING SERVICES, CORP., NEW YORK CITY HOUSING AUTHORITY, NEW YORK CITY HOUSING AUTHORITY CAPITAL PROJECT DIVISION and ROMA SCAFFOLDING, INC.,

Defendant(s).

DECISION & ORDER

Index No.: 509370/2025

Calendar No.: 25

Motion Seq.: 003

Return Date: 04/16/2026

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers Numbered**

- Notice of Motion and Supporting Documents
- Affirmation in Opposition and Supporting Documents
- Reply Affirmation and Supporting Documents

Upon the foregoing papers and after oral argument, defendant ROMA SCAFFOLDING, INC.’s (“Roma”) pre-answer motion to dismiss the complaint on the issue of liability per CPLR § 3211 [a] [1] and [c] and CPLR § 3212 [c] is granted as follows.

Plaintiff commenced this action to recover damages for personal injuries arising out of an accident while riding a moped within defendant New York City Housing Authority’s (“NYCHA”) property known as the Marcy Houses on 8/12/2024. Plaintiff alleges in his notice of claim that he fell off the moped when he came in contact with a broken and improperly marked speed bump on an internal roadway. Roma has moved to dismiss this action based on its bid contract with NYCHA and the Certificate of Final Acceptance issued by NYCHA that Roma completed the work as of 5/12/2023, more than one year before plaintiff’s accident. Based on

this documentary evidence, Roma argues it has established a complete defense warranting dismissal (CPLR § 3211 [a] [1]). Roma also submits the affidavit of its Project Manager, Imran Sajjad. Mr. Sajjad states that it did not perform roadway work as part of its contract. The scope of the work per the contract was roof replacement of specific buildings. Roma argues in the alternative that it is entitled to summary judgment under CPLR § 3211 [c] and CPLR § 3212 [c] as there are no material issues of fact that require a trial. In opposition to the motion, NYCHA did not come forward with evidence from a person with knowledge of the contract, the work performed by Roma, or the Certificate of Final Acceptance issued by NYCHA. Plaintiff submitted the pleadings of all parties and photographs of the accident scene.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). “A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324).

The Court’s only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must

view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

“A motion pursuant to CPLR § 3211 [a] [1] to dismiss the complaint on the ground that the action is barred by documentary evidence may be [appropriately] granted only where the documentary evidence utterly refutes the plaintiff’s factual allegations, thereby conclusively establishing a defense, as a matter of law” (*Karpovich v City of New York*, 162 AD3d 996, 997 [2d Dept 2018] *citing Mawere v Landau*, 130 AD3d 986, 987 [2d Dept 2015]; *see also Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007] [The construction of an unambiguous contract is a matter of law.] and *Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 314, 326 [2002]). “To constitute ‘documentary’ evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and other papers, the contents of which are essentially undeniable” (*Karpovich v City of New York*, 162 AD3d at 997-998; *see Prott v Lewin & Baglio*, 150 AD3d 908, 909 [2d Dept 2017]). Affidavits submitted in support of such motion do not qualify as documentary evidence because their “contents can be controverted by other evidence, such as another affidavit” (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]; *Prott v Lewin & Baglio*, 150 AD3d at 909).

Here, the contract and Certificate of Final Acceptance establish as a matter of law that Roma did not perform work on the roadway and had left the job site more than one year before plaintiff’s accident. Therefore, Roma is entitled to dismissal of the complaint” (*Karpovich v City*

of *New York*, 162 AD3d 997; *Beal Sav. Bank v Sommer*, 8 NY3d 324 and *Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 326; CPLR § 3211 [c]). Roma is also entitled to dismissal per CPLR § 3212 [c] as the project manager's affidavit, together with the documentary evidence, were un rebutted by NYCHA or plaintiff. NYCHA failed to submit an affidavit from one or more of its representatives who either signed the Certificate of Final Acceptance and/or would have personal knowledge of the contract and Roma's work (*Giuffrida v Citibank*, 100 NY2d 81; *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court has considered the parties' remaining contentions and finds same to be without merit.

Accordingly, it is hereby

ORDERED that defendant ROMA SCAFFOLDING, INC.'s motion for summary judgment on liability per CPLR § 3212 is GRANTED and this action is dismissed as against defendant ROMA SCAFFOLDING, INC. only, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: 4/16/2026