

Briones v QB Dev. Owner LLC.
2026 NY Slip Op 31891(U)
April 30, 2026
Supreme Court, New York County
Docket Number: Index No. 153387/2022
Judge: Lynn R. Kotler
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 153387/2022

WASHINGTON BRIONES,

MOTION DATE 02/26/2026

Plaintiff,

MOTION SEQ. NO. 006

- v -

QB DEVELOPMENT OWNER LLC., OMNIBUILD
CONSTRUCTION, INC., MARATHON BUILDERS GROUP
INC., PRIME STRUCTURE INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

QB DEVELOPMENT OWNER LLC., OMNIBUILD
CONSTRUCTION, INC.,

Third-Party
Index No. 595901/2022

Third-Party Plaintiffs,

-against-

PRIME STRUCTURE INC., MARATHON BUILDERS GROUP
INC.,

Third-Party Defendants.

-----X

QB DEVELOPMENT OWNER LLC., OMNIBUILD
CONSTRUCTION, INC.,

Second Third-Party
Index No. 595024/2023

Second Third-Party Plaintiffs,

-against-

THE CASA GROUP, INC.,

Second Third-Party
Defendant.

-----X

PRIME STRUCTURE INC.,

Third Third-Party
Index No. 595304/2023

Third Third-Party Plaintiff,

-against-

MARATHON BUILDERS GROUP INC

Third Third-Party Defendant.

-----X
 QB DEVELOPMENT OWNER LLC., OMNIBUILD
 CONSTRUCTION, INC.,

Fourth Third-Party
 Index No. 596135/2024

Fourth Third-Party Plaintiffs,

-against-

THE CASA GROUP INC.,

Fourth Third-Party
 Defendant.

-----X
 The following e-filed documents, listed by NYSCEF document number (Motion 006) 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 253, 254, 255, 256, 258, 259, 260

were read on this motion to/for

DISCOVERY

This labor law action arises from an alleged accident suffered by plaintiff Washington Briones on April 8, 2022, while working on a construction project encompassing two adjacent buildings in Queens—a “West Building” with the address of 46-09 69th Street, which is located at the corner of 69th Street and Queens Boulevard, and an “East Building” with the address of 46-10 70th Street, which is located at the corner of 47th Avenue and 70th Street. Fourth third-party defendant The Casa Group Inc. (“Casa”), which was retained to provide site safety management at both buildings comprising the construction project, now moves pursuant to CPLR 3124 to compel Briones to appear for a further deposition regarding the precise location of the alleged accident or else be precluded, pursuant to CPLR 3126, from offering evidence at trial regarding the location of the alleged accident.¹ Briones opposes the motion, as do fourth third-party plaintiffs QB Development Owner LLC and Omnibuild Construction, Inc. The motion is denied.

Casa’s motion is premised on Briones’s service of a supplemental bill of particulars on January 19, 2026, after his deposition had already been completed, which Casa contends materially altered the factual allegations regarding the location of Briones’s accident in a manner that bears directly on Casa’s defenses. Briones’s previously served bills of particulars stated that the alleged accident occurred within the building located at 46-09 69th Street—the West Building—whereas the newly served supplemental bill of particulars identified the alleged accident location as the East Building. Casa contends this distinction bears directly on its defenses, as its deposition witness has testified that Casa ceased providing site safety

¹ Casa’s notice of motion states that preclusion is sought pursuant to CPLR 3042(c), but that provision is inapplicable to the circumstances presented by this motion and it is evident from the attorney affirmation in support of the motion that Casa actually seeks the subject relief pursuant to CPLR 3126.

management at the West Building as of February 1, 2022, approximately two months prior to the alleged accident, and that it will therefore be prejudiced absent a further deposition of Briones.

Casa's argument falls apart, however, upon even cursory inspection of Briones's supplemental bill of particulars, which expressly states that its purpose is to conform the formal allegations regarding the accident location to Briones's sworn deposition testimony (*see* NYSCEF Doc. No. 232). While the previously served bills of particulars, dated December 2022, March 2023, and June 2023, identified the location of the accident as the West Building, Briones subsequently testified at his deposition on August 17, 2023, that there were two distinct buildings at the construction project and that "[t]he building where [he] suffered [his] accident is on 47th and 70th . . . right there on that corner"—i.e., the East Building (NYSCEF Doc. No. 244 [Briones 8/17/23 EBT Tr.] at 36:6-37:2). Briones's supplemental bill of particulars expressly cites this testimony.

Moreover, Casa has already had an opportunity to question Briones regarding the precise location of his accident when it took its own deposition of Briones on June 25, 2025. Incredibly, not only did Casa waste that opportunity by failing to question Briones regarding this purportedly critical issue (*see* NYSCEF Doc. No. 247 [Briones 6/25/25 EBT Tr.]), but it now offers no explanation on the present motion for this glaring omission. The court notes that, having ceased providing site safety management at the West Building prior to the date of Briones's alleged accident, Casa was plainly aware when it deposed Briones of the importance to its potential defenses of identifying the specific building in which the accident occurred. Further, Casa was also aware when it deposed Briones of both his previously served bills of particulars and his prior testimony at the August 2023 deposition regarding the location of his accident. Indeed, in an email dated July 23, 2025, less than a month after he took Briones's deposition, Casa's counsel acknowledged that, while Briones's bills of particulars identified the accident location as the building "on 69th which is the West Tower[.]" Briones had "clarified th[e] issue" with his subsequent testimony [referring to the August 2023 deposition] that "it was the one on 70th which is the East Tower" (NYSCEF Doc. No. 259).

Thus, the January 2026 supplemental bill of particulars did not, as Casa suggests, allege any new facts, but merely conformed Briones's formal allegations to the sworn testimony he gave at his deposition nearly two-and-a-half years earlier. Casa's feigned surprise at this formality, and its contention that it has been "deprived of any opportunity to examine [Briones] regarding the newly alleged incident location," border on the frivolous. Therefore, Casa's motion is denied.

As noted in the court's order dated February 19, 2026, except for the further deposition of Briones sought in the present motion, which is denied, and a lone response to post-EBT demands, which the court directed be served on or before March 6, 2026, "all other discovery in this case is complete" (NYSCEF Doc. No. 257).

Accordingly, it is

ORDERED that fourth third-party defendant The Casa Group Inc.'s motion is denied; and it is further


ORDERED that the deadline to file the note of issue is hereby extended to May 8, 2026; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

4/30/2026

DATE



LYNN R. KOTLER, 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