

<b>Perez v City of New York</b>
2026 NY Slip Op 32018(U)
May 11, 2026
Supreme Court, New York County
Docket Number: Index No. 160913/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

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PATRICIO DARIO PEREZ, JENNIFER HERRERA,  
Plaintiff,

**INDEX NO. 160913/2020**

**MOTION DATE 05/07/2026**

**MOTION SEQ. NO. 005 006 007**

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY  
ECONOMIC DEVELOPMENT CORP, HHSC 13TH STREET  
DEVELOPMENT CORP, 14TH AT IRVING FEE LLC, RAL  
DEVELOPMENT SERVICES LLC, SUFFOLK  
CONSTRUCTION COMPANY INC.,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

THE CITY OF NEW YORK, THE NEW YORK CITY  
ECONOMIC DEVELOPMENT CORP, 14TH AT IRVING FEE  
LLC, RAL DEVELOPMENT SERVICES LLC, SUFFOLK  
CONSTRUCTION COMPANY INC.

Third-Party  
Index No. 595183/2022

Plaintiff,

-against-

RCD SQUARED LLC A/K/A RCD CONSTRUCTION,  
CONSULTING LLC D/B/A RCD CONSTRUCTION CORP.,  
CITY SAFETY COMPLIANCE CORP

Defendants.

-----X

RCD SQUARED LLC A/K/A RCD CONSTRUCTION,  
CONSULTING LLC D/B/A RCD CONSTRUCTION CORP.

Second Third-Party  
Index No. 596098/2023

Plaintiff,

-against-

LONG ISLAND CONCRETE INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 206, 209, 210, 211, 212, 213, 214, 215, 216, 217, 232, 235, 236

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 207, 218, 219, 220, 221, 222, 223, 224, 233, 238, 239

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 208, 225, 226, 227, 228, 229, 230, 231, 234, 237

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

Motion Sequence Numbers 005, 006 and 007 are consolidated for disposition. They are decided as described below.

**Background**

In this Labor Law case, plaintiff Perez (hereinafter, “plaintiff”) claims he was working for second third-party defendant Long Island Concrete, Inc. (“Long Island Concrete”) at a construction site in Manhattan when he was injured (NYSCEF Doc. No. 156 at 20, 31). He explained that he was tasked with “making enclosures for the walls that were around the building” (*id.* at 33). Plaintiff testified that “In that building, they were working with a system of three all on a scaffold. And then we were in charge of hoisting up—when the hoist bring it up, we were in charge of putting it together to the wall” (*id.* at 34). To accomplish the task, a crane was used to raise a platform (*id.* at 35-38). Plaintiff recognized the word “Doka” as the name of the platform (*id.* at 38). As each platform is raised, it is then anchored the outer wall of the building (*id.* at 39).

Plaintiff testified that at the time of his accident, the crane was raising the platform to the seventh floor (*id.* at 47). He admitted that he was standing on the platform and was tied to it as it was being raised (*id.*). Plaintiff explained that “It all collapsed and it spun around” and that the platform fell along with “the wall and everything” (*id.* at 50). He added that “I think it [the

platform] went up to the sixth—fifth and sixth floor. And it pinned me with the concrete wall (*id.* at 51). Plaintiff hypothesized that the accident happened because “the crane was not connected to the platform properly” (*id.* at 52).

### MS005

Plaintiff moves for summary judgment on his Labor Law § 240(1) claim. He claims that cables securing the platform broke free and this caused him to fall. Plaintiff admits he was wearing a harness that caught him, but he was seriously injured nevertheless and that he was not adequately protected. He emphasizes that it was the typical procedure to stand on this platform during this part of the construction project.

In opposition, defendants THE CITY OF NEW YORK, THE NEW YORK CITY ECONOMIC DEVELOPMENT CORP., 14TH AT IRVING FEE, LLC, RAL DEVELOPMENT SERVICES, LLC, SUFFOLK CONSTRUCTION COMPANY, INC., and LONG ISLAND CONCRETE, INC. (hereinafter, the “Irving Defendants”) contend that plaintiff ignored multiple and specific warnings to not stand on the platform as it was being raised. They contend that this constitutes a material issue of fact concerning his recalcitrance.

The Irving Defendants point to an affidavit from Long Island Concrete project manager Zachary Ippolito who contends that “there was a strict prohibition against anyone from the LIC crew, including the laborers, to ever ride upon or remain on a temporary platform as it was being raised. I have personal knowledge of this fact as I attended meetings where I, myself, stressed this strict prohibition against anyone from LIC, including the laborers, to ride upon or remain on a temporary platform as it was being raised” (NYSCEF Doc. No. 214, ¶ 8).

They emphasize that Peter Byrne, the “lift director” for Long Island Concrete, swears that he attended meetings at this job site where plaintiff was present and he (along with other

workers) were specifically told not to ride the temporary platform as it was being raised (NYSCEF Doc. No. 215, ¶ 11). He adds that “Before the platform was to be raised, I, myself, verbally told all workers to get off from the platform. Additionally, those who reported to me also sounded an airhorn to further alert Perez and Tucker to remove themselves from the platform that was to be raised” (*id.* ¶ 15).

In reply, plaintiff claims that he cannot be the sole proximate cause of his accident because the accident was due to improper rigging. He argues that he did not rig the platform, did not make the determination about how to lift the platform and that there were at least four other people on site who were supposed to be watching the lift and instructing workers to get clear of the platform.

The Court denies the motion as there is an issue of fact regarding whether or not plaintiff was a recalcitrant worker in that he remained on the platform in direct defiance of safety instructions (*c.f. Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 39, 790 NYS2d 74 [2004] [finding issue of fact where worker allegedly received specific instructions and ignored them]). Here, Long Island Concrete’s witnesses emphasized that no one was supposed to be standing on the platform that was being raised and that there were repeated meetings at which this instruction was passed along to the workers, including plaintiff. A fact finder might conclude that plaintiff was the sole proximate cause of his accident because he ignored this instruction. Or a factfinder might that some defendant or someone from Long Island Concrete should have ensured no one was on the platform prior to raising it.

### **MS006**

In this motion, defendants RCD SQUARED LLC a/k/a RCD CONSTRUCTION AND CONSULTING LLC d/b/a RCD CONSTRUCTION CORP. (“RCD”) seeks summary judgment

on the ground that it had no duty of care to plaintiff. It emphasizes that plaintiff's employer, Long Island Concrete, had sole control over the platform lifting operation and that RCD did not have any supervisory role with respect to the injury causing conduct. RCD is a safety consulting firm and its owner, Mr. Distasio, was hired by Long Island Concrete to provide concrete manager services for the worksite.

RCD argues that it does not run safety meetings at job sites and did not have the authority to stop work if it saw any unsafe behavior. It claims that it had no responsibility to indemnify the third-party plaintiffs outside of Long Island Concrete. RCD also seeks affirmative relief on its claim for contractual indemnification against Long Island Concrete.

In opposition, the Irving Defendants contend that there are material issues of fact that should compel the Court to deny the instant motion. They contend that the president of Long Island Concrete testified that RCD was a safety company hired by Long Island Concrete and were watching how work was performed. The Irving Defendants also claim that the contract between Long Island Concrete and RCD was not signed and that, therefore, raises issues of fact with respect to any contractual indemnification issues.

The Court grants this motion but only to the extent that the third-party complaint is dismissed as against RCD with respect to all claims except for common law indemnification and contribution. On these papers, the only mention of an agreement is one between RCD and Long Island Concrete and Long Island Concrete is not a third-party plaintiff. Of course, that agreement is unsigned but, in any event, it does not require RCD to provide contractual indemnification to the third-party plaintiffs (NYSCEF Doc. No. 186). Therefore, the Court is unable to find that RCD has a contractual duty to potentially provide indemnification based on that contract or that

it had to procure insurance naming any of the third-party plaintiffs. This Court cannot create a contractual duty where none exists.

However, the Court denies the branch of the motion with respect to the claims for common law indemnification or contribution. Unfortunately, while the aforementioned agreement says that RCD was to provide only consulting services, it is unsigned and so the Court cannot confine RCD's responsibilities to the terms of an agreement that was not fully executed at least on this record. And Long Island Concrete's witness testified that RCD was "the concrete safety manager" (NYSCEF Doc. No. 185 at 51). That witness added that "They were on the deck watching exactly [what] was done, anything unsafe or anything we were doing wrong. And so like that was their job. That is why we hired them" (*id.* at 54). He added that the RCD safety manager worked together with lift director (*id.*).

The Court cannot conclude as a matter of law that having someone on site watching the work for safety is only limited to merely an advisory role for which they could not be liable under a theory of common law indemnification or contribution. In other words, a fact finder might conclude that RCD should have stepped in to halt the work or told someone to stop the work if they saw someone standing on the platform while it was being raised.

With respect to RCD's affirmative claim against Long Island Concrete, the Court denies that branch of the motion as there are issues of fact with respect to RCD's actual involvement in the accident and the extent to which it should have intervened.

## MS007

In this motion, third-party defendant City Safety Compliance Corp. ("City Safety") moves for summary judgment dismissing the third-party complaint as well as any crossclaims

against it. City Safety contends that plaintiff did not make any direct allegations against it and that it was merely hired to provide certain limited safety services. It explains that it was hired exclusively to comply with Chapter 33 of the Building Code and it performed this task. City Safety observes that this section of the Building Code concerns safety for members of the public and property but does not cover worker safety.

In opposition, the Irving Defendants contend that there is an issue of fact with respect to City Safety's level of control over the work performed at this construction site. They argue that City Safety supplied substitute safety managers and that City Safety provided specific instructions to Long Island Concrete workers.

The Court grants this motion. The responsibilities detailed in the executed contract detail that City Safety was required to provide a site safety manager to ensure compliance with "NYC Building Code Chapter 33" (NYSCEF Doc. No. 198 at 7 of 7). No one disputes that this provision of the Building Code only relates to public and property safety. In this Court's view, that limitation requires the Court to grant the instant motion. A generalized or broader site safety description could have been part of the contract but, instead, the parties entered into a limited agreement with specific duties. This Court declines to expand the terms of the contract based on, at best, vague deposition testimony.

Accordingly, it is hereby

ORDERED that plaintiff's motion (MS005) for summary judgment is denied; and it is further

ORDERED that RCD SQUARED LLC a/k/a RCD CONSTRUCTION AND CONSULTING LLC d/b/a RCD CONSTRUCTION CORP.'s motion (MS006) for summary

judgment is granted to the extent that the claims in the third-party complaint for contractual indemnification and for failure to procure insurance are severed and dismissed; and it is further

ORDERED that third-party defendant City Safety Compliance Corp.’s motion (MS007) for summary judgment dismissing the third-party complaint and all cross claims alleged against it is granted and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

5/11/2026

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