

NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

Lacruise v. Memorial Sloan-Kettering Cancer Center (David H. Koch Center) et al.

2026 NY Slip Op 00424 (N.Y. Ct. App. 2026) · No. Case No. 2025-00463; Appeal No. 5706; Index No. 150195/19 · Decided January 29, 2026

SUMMARY

The New York Appellate Division, First Department modified an order concerning a construction-site accident involving an uncovered drainage hole on a roof setback. The court dismissed the plaintiff's Labor Law § 241(6) claim because the outdoor roof setback was not a passageway under Industrial Code § 23-1.7(e)(1), but affirmed the denial of summary judgment for defendants and the grant of partial summary judgment to plaintiff on the Labor Law § 200 claim based on evidence of notice of the dangerous condition.

CASE DETAILS

COURT	New York Supreme Court, Appellate Division, First Department
WRITING FOR THE COURT	Scarpulla, J.P.; Kapnick, J.; González, J.; Shulman, J.; O'Neill Levy, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	January 29, 2026
DOCKET	Case No. 2025-00463; Appeal No. 5706; Index No. 150195/19
DISPOSITION	modified_and_affirmed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiff partial summary judgment on a Labor Law § 200 claim and part of a Labor Law § 241(6) claim, while denying defendants' motion for summary judgment dismissing those claims.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and no triable issue of fact remains; the appellate court reviewed the order on the law.
PRECEDENTIAL VALUE	Published; binding precedent within the First Department subject to higher-court authority.
PARTIES	Memorial Sloan-Kettering Cancer Center (David H. Koch Center), Turner Construction Company v. Anthony Lacruise

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an outdoor roof setback is a "passageway" within the meaning of Industrial Code § 23-1.7(e)(1), supporting a Labor Law § 241(6) claim.
2. Whether plaintiff abandoned the remaining Industrial Code provisions supporting his Labor Law § 241(6) claim by failing to address them in opposition to defendants' motion.
3. Whether defendants were entitled to summary judgment on plaintiff's Labor Law § 200 claim where the accident arose from a dangerous premises condition rather than the means and methods of plaintiff's work.
4. Whether plaintiff established defendants' actual or constructive notice of the uncovered drainage hole for purposes of partial summary judgment on the Labor Law § 200 claim.

HOLDINGS

1. An outdoor roof setback is not a "passageway" within the meaning of Industrial Code § 23-1.7(e)(1), which applies to an interior or internal way of passage inside a building; therefore, the Labor Law § 241(6) claim predicated on that provision must be dismissed.
2. Plaintiff abandoned the remaining Industrial Code provisions by failing to address them in opposition to defendants' motion, leaving no basis to preserve those theories.
3. Defendants were not entitled to summary judgment dismissing the Labor Law § 200 claim because the accident arose from a dangerous condition on the premises rather than from the means and methods of plaintiff's work; plaintiff therefore did not need to show that defendants exercised supervisory control over his work.
4. Plaintiff was entitled to partial summary judgment on the Labor Law § 200 claim because the evidence established that defendants had, at minimum, constructive notice of the uncovered drainage hole.

KEY QUOTATIONS

*"To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the defendant] to discover and remedy it" (*1)*

*"an interior or internal way of passage inside a building" (*1)*

FACTUAL BACKGROUND

Plaintiff was working at a construction site in a building owned by Memorial Sloan-Kettering Cancer Center. After his foreman directed him to work at an outdoor roof setback on the twentieth floor, plaintiff tripped and

fell into an uncovered drainage hole while walking to the work area. The hole had been formed during or before the pouring of a concrete slab weeks before the accident and remained uncovered after the slab was poured and cured and the formwork was removed. Turner's safety manager was required to inspect the site daily for uncovered or improperly marked holes and floor openings.

PROCEDURAL HISTORY

Supreme Court, New York County, denied defendants' motion for summary judgment dismissing the Labor Law §§ 200 and 241(6) claims. It granted plaintiff partial summary judgment on the Labor Law § 200 claim and on the § 241(6) claim insofar as based on Industrial Code § 23-1.7(e)(1). The Appellate Division modified the order to dismiss the Labor Law § 241(6) claim and deny plaintiff's corresponding cross-motion, and otherwise affirmed.

DISPOSITION

modified_and_affirmed

CASES CITED

- Quigley v. Port Auth. of N.Y. & N.J., 168 A.D.3d 65, 67-68 (1st Dep't 2018)
- McCullough v. One Bryant Park, 132 A.D.3d 491, 492 (1st Dep't 2015)
- Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 143-144 (1st Dep't 2012)
- Gordon v. American Museum of Natural History, 67 N.Y.2d 836, 837-838 (1986)

OPINION

PER CURIAM.

Lacruise v Memorial Sloan-Kettering Cancer Ctr. (2026 NY Slip Op 00424) Lacruise v Memorial Sloan-Kettering Cancer Ctr. 2026 NY Slip Op 00424 Decided on January 29, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: January 29, 2026 Before: Scarpulla, J.P., Kapnick, González, Shulman, O'Neill Levy, JJ. Index No. 150195/19|Appeal No. 5706|Case No. 2025-00463| [*1]Anthony Lacruise, Plaintiff-Respondent, v Memorial Sloan-Kettering Cancer Center (David H. Koch Center) et al., Defendants-Appellants.? Dopf, P.C., New York (Martin B. Adams of counsel), for appellants.

Sacks & Sacks, LLP, New York (Scott N. Singer of counsel), for respondent. Order, Supreme Court, New York County (Paul A. Goetz, J.), entered January 8, 2025, which, to the extent appealed from as limited by the briefs, denied the motion of defendants Memorial Sloan-Kettering Cancer Center (David H. Koch Center) and Turner Construction Company for summary judgment

dismissing plaintiff's Labor Law §§ 200 and 241(6) claims, and granted plaintiff's cross-motion for partial summary judgment on the Labor Law § 200 claim and the Labor Law § 241(6) claim insofar as predicated on Industrial Code (12 NYCRR) § 23-1.7(e)(1), unanimously modified, on the law, to grant defendants' motion for summary judgment dismissing the Labor Law § 241(6) claim, and to deny plaintiff's cross-motion for partial summary judgment on the Labor Law § 241(6) claim insofar as predicated on Industrial Code § 23-1.7(e)(1), and otherwise affirmed, without costs.

Plaintiff was working at a construction site at a building owned by defendant Memorial Sloan-Kettering when his foreman instructed him to work at an outdoor roof setback on the 20th floor. While he was walking to the work area, plaintiff tripped and fell when he stepped into an uncovered drainage hole that was located in the roof setback. Supreme Court should have dismissed the Labor Law § 241(6) claim insofar as it was predicated on Industrial Code § 23-1.7(e)(1), as the accident occurred outdoors and therefore did not take place in a "passageway" within the meaning of the Industrial Code provision (see *Quigley v Port Auth. of N.Y. & N.J.*, 168 AD3d 65, 67-68 [1st Dept 2018] [holding that a "passageway" under § 23-1.7(e)(1) pertains to "an interior or internal way of passage inside a building"]).

Plaintiff abandoned the remaining Industrial Code provisions supporting his Labor Law § 241(6) claim by failing to address them in his opposition to defendants' motion. The court properly denied defendants' motion for summary judgment dismissing the Labor Law § 200 claim, as the accident arose from a dangerous condition on the premises rather than from the means and methods of plaintiff's work, so plaintiff did not have to show that the owner or general contractor actually exercised supervisory control over plaintiff's work (see *McCullough v One Bryant Park*, 132 AD3d 491, 492 [1st Dept 2015]; *Cappabianca v Skanska USA Bldg.*

Inc., 99 AD3d 139, 143-144 [1st Dept 2012]). The court also properly granted plaintiff's cross motion for partial summary judgment on the § 200 claim, as plaintiff offered sufficient evidence that defendants had actual or constructive notice of the uncovered drainage hole. "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the defendant] to discover and remedy it" (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838 [1986]).

Although the record does not establish the precise date on which the drainage hole was created, it does demonstrate that it was formed during or prior to the pouring of the concrete slab, which occurred weeks before the accident.

The drainage hole remained uncovered after the concrete was poured, cured, and the formwork removed which necessarily reflects the passage of weeks, if not months, during which the condition remained exposed and readily observable. This conclusion is reinforced by evidence that

Turner's safety manager was required to walk the entire site on a daily basis to ensure, among other things, that holes and floor openings were properly covered and marked.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 29, 2026

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