

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

construction law premises liability appellate procedure standard of review

PRACTICE AREAS

construction law premises liability appellate procedure torts

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)