

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Nizia Florencia Silva Mendes v. State of New York

Mendes, 2026 NY Slip Op 01048 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-05544 · Decided February 25, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order granting the State summary judgment on the claimant’s Labor Law § 241(6) claim predicated on Industrial Code § 23-9.7(e). The court held that the State failed to establish prima facie that the truck was stationary or otherwise demonstrate that the regulation was inapplicable to the claimant’s alleged injury while exiting a moving box truck.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 25, 2026
DOCKET	2024-05544
DISPOSITION	reversed
PROCEDURAL POSTURE	The claimant appealed from an order of the Court of Claims granting the State's motion for summary judgment dismissing the portion of her Labor Law § 241(6) claim predicated on Industrial Code § 23-9.7(e).
STANDARD OF REVIEW	Summary judgment is appropriate only when the movant establishes entitlement to judgment as a matter of law. The moving party bears the prima facie burden, and a conclusory affidavit or an affidavit from a person without personal knowledge does not satisfy that burden.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Nizia Florencia Silva Mendes v. State of New York

TOPICS

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QUESTIONS PRESENTED

1. Whether the State established as a matter of law that Industrial Code § 23-9.7(e), governing riding on trucks and similar vehicles, was inapplicable because the truck was stationary at the time of the accident.
2. Whether the State was entitled to summary judgment dismissing the Labor Law § 241(6) claim predicated on Industrial Code § 23-9.7(e).

HOLDINGS

1. The State failed to establish prima facie that the truck was stationary at the time of the accident or otherwise demonstrate that Industrial Code § 23-9.7(e) was inapplicable.
2. The branch of the State's summary-judgment motion seeking dismissal of the Labor Law § 241(6) claim predicated on Industrial Code § 23-9.7(e) should have been denied.

KEY QUOTATIONS

"imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" ([*1])

"To establish liability under Labor Law § 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case" ([*2])

"[n]o person shall be suffered or permitted to ride on running boards, fenders or elsewhere on a truck or similar vehicle except where a properly constructed and installed seat or platform is provided." ([*2])

"A conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not establish the proponent's prima facie burden on a motion for summary judgment" ([*2])

FACTUAL BACKGROUND

Mendes allegedly was injured while mixing paint inside the back of a box truck when the truck began to move. She alleged that she attempted to exit through the rear while a coworker began raising the truck's lift gate, causing her to run toward the back, lose her balance, and catch her leg in the lift gate. Mendes and her coworker testified that the truck was moving, while the State relied on a quality-control officer's affidavit stating that it was stationary.

PROCEDURAL HISTORY

Mendes commenced a personal-injury claim against the State, alleging, among other things, a violation of Labor Law § 241(6) based on Industrial Code § 23-9.7(e). The Court of Claims granted the State's motion for summary

judgment as to that theory. The Appellate Division reversed insofar as appealed from and denied the relevant branch of the State's motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Court of Claims order was reversed insofar as appealed from, and the branch of the State's motion seeking summary judgment dismissing the Labor Law § 241(6) claim predicated on Industrial Code § 23-9.7(e) was denied.

CASES CITED

- Ochoa v JEM Real Estate Co., LLC, 223 AD3d 747, 749
- Guoxing Song v CA Plaza, LLC, 208 AD3d 760, 761
- Cadena v Kupferstein, 238 AD3d 973, 975
- Bayron Chay Mo v Ultra Dimension Place, LLC, 236 AD3d 721
- Valerio v City of New York, 238 AD3d 945, 947
- Zeldin v Larose, 223 AD3d 858, 858
- Wetter v Northville Indus. Corp., 185 AD3d 874, 875

OPINION

Mendes v. State of New York 2026 NY Slip Op 01048

PER CURIAM.

Mendes v State of New York (2026 NY Slip Op 01048) Mendes v State of New York 2026 NY Slip Op 01048 Decided on February 25, 2026 Appellate Division, Second 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 on February 25, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

WILLIAM G. FORD

HELEN VOUTSINAS

LAURENCE L. LOVE, JJ. 2024-05544

[*1]Nizia Florencia Silva Mendes, appellant, v State of New York, respondent. (Claim No. 131639) Queller, Fisher, Washor, Fuchs & Kool and The Law Office of William A. Gallina, LLP, New York, NY (Christopher L. Sallay of counsel), for appellant. Cullen and Dykman, LLP, New York, NY (Virginia Harper and Christopher Ruggiero of counsel), for respondent. DECISION & ORDER In a claim to recover damages for personal injuries, the claimant

appeals from an order of the Court of Claims (Gina M. Lopez-Summa, J.), dated April 1, 2024. The order, insofar as appealed from, granted that branch of the defendant's motion which was for summary judgment dismissing so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of Industrial Code (12 NYCRR) § 23-9.7(e). ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the defendant's motion which was for summary judgment dismissing so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of Industrial Code (12 NYCRR) § 23-9.7(e) is denied. The claimant allegedly was injured while mixing paint inside the back of a box truck when the truck began to move. The claimant alleged that she tried to exit through the back of the truck, but at the same time, a coworker began to raise the lift gate of the truck. The claimant alleged that she ran towards the back of the truck, lost her balance, fell, and caught her leg in the lift gate, causing injury. The claimant commenced this claim against the defendant to recover damages for personal injuries, alleging, among other things, a violation of Labor Law § 241(6) predicated on, inter alia, a violation of Industrial Code (12 NYCRR) § 23-9.7(e). The defendant moved, among other things, for summary judgment dismissing that portion of that cause of action on the ground that Industrial Code § 23-9.7(e) was inapplicable to the facts of this case because, among other reasons, the truck was not moving at the time of the accident. In an order dated April 1, 2024, the Court of Claims, inter alia, granted that branch of the defendant's motion. The claimant appeals. Labor Law § 241(6) "imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Ochoa v JEM Real Estate Co., LLC* , 223 AD3d 747 , 749; see *Guoxing Song v CA Plaza, LLC* , 208 AD3d 760, 761). "To establish liability under Labor Law § 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code [*2]provision that is applicable under the circumstances of the case" (*Cadena v Kupferstein* , 238 AD3d 973 , 975; see *Bayron Chay Mo v Ultra Dimension Place, LLC* , 236 AD3d 721). Industrial Code § 23-9.7(e), titled, "Riding," provides: "[n]o person shall be suffered or permitted to ride on running boards, fenders or elsewhere on a truck or similar vehicle except where a properly constructed and installed seat or platform is provided." Contrary to the defendant's contention, it failed to establish its prima facie entitlement to judgment as a matter of law dismissing so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of Industrial Code § 23-9.7(e), as the defendant failed to demonstrate that Industrial Code § 23-9.7(e) does not apply to the facts of this case. "A conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not establish the proponent's prima facie burden on a motion for summary judgment" (*Valerio v City of New York* , 238 AD3d 945 , 947 [internal quotation marks omitted], quoting *Zeldin v Larose* , 223 AD3d 858 , 858). Here, in support of its motion, the defendant submitted a conclusory affidavit from a quality control officer who did not personally witness the accident but

stated that the truck was not moving. The defendant also submitted a transcript of the claimant's deposition testimony in which she testified that the truck was moving and a transcript of the deposition testimony of her co-worker, who also testified that the truck was moving at the time of the accident. The defendant did not establish, prima facie, that the truck was stationary at the time of the accident and that therefore Industrial Code § 23-9.7(e) did not apply (see generally *Wetter v Northville Indus. Corp.* , 185 AD3d 874, 875). Nor did the defendant otherwise establish the inapplicability of Industrial Code § 23-9.7(e). Accordingly, the Court of Claims should have denied that branch of the defendant's motion which was for summary judgment dismissing so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of Industrial Code § 23-9.7(e). BRATHWAITE NELSON, J.P., FORD, VOUTSINAS and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court