

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

Viana v. All Is. Recycle & Rubbish Removal

2026 NY Slip Op 00811 (Supreme Court of the State of New York Appellate Division Second Judicial  
Department 2026) · No. 2024-07009 · Decided February 11, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order granting Bellco Enterprises, Inc. summary judgment dismissing claims arising from the decedent’s fatal workplace accident. The court held that Bellco lacked authority to supervise or control the work and established that it neither created nor had notice of any dangerous premises condition.

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.; Janice A. Taylor, J.; Lourdes M. Ventura, J.; James P. McCormack, J.                                                                                                                             |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                            |
| DECIDED               | February 11, 2026                                                                                                                                                                                                                 |
| DOCKET                | 2024-07009                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Plaintiff appealed from an order granting Bellco Enterprises, Inc.'s motion for summary judgment dismissing the complaint insofar as asserted against Bellco in an action alleging negligence and seeking wrongful-death damages. |
| STANDARD OF REVIEW    | Summary judgment is proper where the moving party establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.                                                           |
| PRECEDENTIAL VALUE    | Published New York Appellate Division decision                                                                                                                                                                                    |
| PARTIES               | Ruth Viana v. Bellco Enterprises, Inc., All Island Recycle and Rubbish Removal, other defendants                                                                                                                                  |

TOPICS

wrongful death

premises liability

summary judgment

negligence

appellate procedure

## PRACTICE AREAS

torts

wrongful death

premises liability

summary judgment

appellate procedure

## QUESTIONS PRESENTED

1. Whether Bellco could be held liable for negligence based on the manner in which the work was performed when it lacked authority to supervise or control the work.
2. Whether Bellco was entitled to summary judgment on claims based on an allegedly dangerous premises condition because it established the absence of a dangerous condition and lack of creation or actual or constructive notice.
3. Whether plaintiff raised a triable issue of fact in opposition to Bellco's summary-judgment motion.

## HOLDINGS

1. A defendant may be held liable for common-law negligence arising from the manner in which work is performed only if the defendant had authority to supervise or control the performance of the work; Bellco established prima facie that it lacked such authority.
2. A premises owner is entitled to summary judgment when it establishes that no dangerous condition existed or, alternatively, that it did not create the condition and lacked actual or constructive notice of it; Bellco made that prima facie showing.
3. Plaintiff failed to raise a triable issue of fact in opposition to Bellco's motion, so summary judgment dismissing the complaint against Bellco was proper.

## KEY QUOTATIONS

*"Where "a claim arises out of the means and methods of the work, a defendant may be held liable for common-law negligence . . . only if he or she had the authority to supervise or control the performance of the work"" ([\*1])*

*"it did not create the allegedly dangerous condition or have actual or constructive notice of its existence for a sufficient length of time to have discovered and remedied it" ([\*2])*

## FACTUAL BACKGROUND

In 2016, plaintiff's decedent was killed in an accident while working on premises owned by Bellco Enterprises, Inc. The decedent allegedly was struck by a payload loader while working with one of Bellco's tenants. Bellco asserted that the decedent was an independent contractor and that it had no oversight or control over the work. Bellco also contended that it did not create or have notice of any dangerous condition on the premises.

## PROCEDURAL HISTORY

The decedent was killed in a 2016 accident on premises owned by Bellco. Plaintiff commenced an action against Bellco and others. The Supreme Court, Suffolk County, granted Bellco's motion for summary judgment, and

plaintiff appealed. The Appellate Division affirmed insofar as appealed from.

## DISPOSITION

affirmed

## CASES CITED

- Nusio v. Legend Autorama, Ltd., 219 AD3d 842, 843
- Roblero v. Bais Ruchel High Sch., Inc., 175 AD3d 1446, 1448
- Walsh v. Kenny, 219 AD3d 1555, 1557
- Abelleira v. City of New York, 201 AD3d 679, 680
- Hamm v. Review Assoc., LLC, 202 AD3d 934, 939
- Verderosa v. County of Suffolk, 226 AD3d 845, 847
- Zuckerman v. City of New York, 49 NY2d 557, 563
- Seizeme v. Levy, 208 AD3d 809, 811