

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Sampson v. Perez

2026 NY Slip Op 03734 (N.Y. Ct. App. 2026) · No. 2025-03452 · Decided June 11, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed summary judgment dismissing the claims against San Mateo Construction Corp. The court held that San Mateo established that its employee was not acting within the scope of his employment when the collision occurred, and that the plaintiff failed to raise a triable issue of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Friedman, J.; Mendez, J.; Pitt-Burke, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	June 11, 2026
DOCKET	2025-03452
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed an order granting defendant San Mateo Construction Corp.'s motion for summary judgment dismissing the complaint against it.
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
PARTIES	Nakita McNeil Sampson v. San Mateo Construction Corp.

TOPICS

- [vicarious liability](#) [respondeat superior](#) [personal injury](#) [torts](#)

PRACTICE AREAS

- [torts](#) [vicarious liability](#) [employment law](#) [summary judgment](#)

QUESTIONS PRESENTED

1. Whether San Mateo Construction Corp. was entitled to summary judgment because its employee, Marvin Perez, was not acting within the scope of his employment when the collision occurred.
2. Whether evidence that Perez was carrying work equipment and had a parking placard and dome light in his vehicle raised a triable issue of fact concerning whether he was acting within the scope of his employment.

HOLDINGS

1. San Mateo was entitled to summary judgment because it established prima facie that Perez was not acting within the scope of his employment when the accident occurred, and plaintiff failed to raise a triable issue of fact.
2. Perez was not acting in furtherance of his work merely because he was carrying ten traffic cones or because his vehicle displayed a dome light and parking placard.

KEY QUOTATIONS

“San Mateo established prima facie that its employee, defendant Marvin Perez, was not acting within the scope of his employment at the time of the accident involving plaintiff's decedent” (at 1)

“Plaintiff failed to raise a triable issue of fact in opposition.” (at 1)

FACTUAL BACKGROUND

Plaintiff's decedent was involved in a collision with a vehicle owned and driven by San Mateo employee Marvin Perez. Perez's work shift had ended approximately six hours before the accident; after stopping for dinner, he was driving home in his personally owned vehicle and was not reimbursed by San Mateo for car-related expenses. Although Perez was carrying ten job-required traffic cones and his vehicle displayed a parking placard and dome light, the court found those facts did not establish that he was acting in furtherance of his employment.

PROCEDURAL HISTORY

Supreme Court, New York County, granted San Mateo Construction Corp.'s motion for summary judgment and dismissed the complaint against it. The Appellate Division, First Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- *Kawoya v. Pet Pantry Warehouse*, 3 A.D.3d 368, 369 (1st Dep't 2004), appeal dismissed, 2 N.Y.3d 752 (2004)
- *Lundberg v. State of New York*, 25 N.Y.2d 467, 471 (1969)
- *Fein v. Cook*, 153 A.D.3d 1168, 1168 (1st Dep't 2017)
- *Nero v. Ris Paper Co.*, 60 A.D.2d 340, 347 (1st Dep't 1978), *aff'd*, 46 N.Y.2d 967 (1979)

- Matos v. Depalma Enters., 160 A.D.2d 1163, 1164 (3d Dep't 1990)

OPINION

PER CURIAM.

Sampson v Perez - 2026 NY Slip Op 03734 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Sampson v Perez 2026 NY Slip Op 03734 June 11, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. Nakita McNeil Sampson, etc., Plaintiff-Appellant, v Marvin Perez, et al., Defendants, San Mateo Construction Corp., Defendant-Respondent. Decided and Entered: June 11, 2026 Index No. 153580/19|Appeal No. 6878|Case No. 2025-03452| Before: Kennedy, J.P., Friedman, Mendez, Pitt-Burke, JJ. Joshua Annenberg, New York, for appellant.

Nicoletti, Spinner, Ryan, Gulino & Pinter, New York (Matthew G. Corcoran of counsel), for respondent. [*1] Order, Supreme Court, New York County (James G. Clynes, J.), entered on or about March 27, 2025, which granted defendant San Mateo Construction Corp.'s motion for summary judgment dismissing the complaint against it, unanimously affirmed, without costs.

Supreme Court properly granted San Mateo's motion for summary judgment. San Mateo established prima facie that its employee, defendant Marvin Perez, was not acting within the scope of his employment at the time of the accident involving plaintiff's decedent (see Kawoya v Pet Pantry Warehouse, 3 AD3d 368, 369 [1st Dept 2004], appeal dismissed 2 NY3d 752 [2004]).

San Mateo submitted time sheets showing that Perez's shift had ended approximately six hours prior to the accident and Perez's testimony that he had stopped for dinner after his shift and was on his way home at the time of the collision, established that Perez was not in the course of his employment at the time of the accident (see Lundberg v State of New York, 25 NY2d 467, 471 [1969]).

Additionally, it is undisputed that the vehicle involved in the collision was owned by Perez, who was alone at the time of the accident, and was not reimbursed in any way for car-related expenses by San Mateo (see Fein v Cook, 153 AD3d 1168, 1168 [1st Dept 2017]). Plaintiff failed to raise a triable issue of fact in opposition. Perez was not utilizing his car in furtherance of his work by transporting 10 job-required traffic cones at the time of the accident.

San Mateo's rule requiring parking coordinators to carry their equipment at all times did not require Perez to drive on the route he took when he was involved in the accident (see Nero v Ris

Paper Co., 60 AD2d 340, 347 [1st Dept 1978], affd 46 NY2d 967 [1979]; Matos v Depalma Enters., 160 AD2d 1163, 1164 [3d Dept 1990]).

Moreover, photographs of Perez's car at the time of the accident showing a dome light and displaying a parking placard do not raise an issue of fact as to whether he was acting within the scope of his employment. Neither the dome light nor the placard were provided by San Mateo or required to be used by its employees while on the job. Further, Perez stated that although he sometimes used both the light and placard while working, on this occasion he simply forgot to remove them when he began to drive home.

We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 11, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.