

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

Chiriboga-Herrera v. Litt

Chiriboga-Herrera, 2026 NY Slip Op 00344 (Supreme Court of the State of New York Appellate Division
Second Judicial Department 2026) · No. 2024-03315 · Decided January 28, 2026

SUMMARY

The New York Appellate Division, Second Department, reversed the grant of summary judgment to property owner Marty Litt in a personal injury and wrongful death action arising from a construction-site beam collapse. The court held that Litt failed to establish his entitlement to the homeowner exemption under Labor Law §§ 240(1) and 241(6), and failed to eliminate factual issues concerning supervision, control, dangerous conditions, and notice under Labor Law § 200 and common-law negligence. The court dismissed one plaintiff's appeal as taken from a default and deemed the construction company's appeal dismissed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Deborah A. Dowling, J.; Lillian Wan, J.; Janice A. Taylor, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	January 28, 2026
DOCKET	2024-03315
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed, and Spiotta Construction Management Corp. separately appealed, from an order granting Marty Litt summary judgment dismissing the complaint against him. The appeal by Elva Castro was dismissed because no appeal lies from an order entered on the appealing party's default, and Spiotta's appeal was deemed dismissed under 22 NYCRR 1250.10(a).
STANDARD OF REVIEW	On a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law by eliminating all material issues of fact. If the movant fails to make that

	showing, the motion must be denied regardless of the sufficiency of the opposition papers.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Joselyn Natalia Chiriboga-Herrera, Elva Castro, Spiotta Construction Management Corp. v. Marty Litt

TOPICS

construction law wrongful death summary judgment appellate procedure standard of review

PRACTICE AREAS

construction law torts wrongful death civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Elva Castro could appeal from an order entered on her default.
2. Whether Marty Litt established prima facie entitlement to the one- and two-family dwelling homeowner exemption under Labor Law §§ 240(1) and 241(6).
3. Whether Litt established as a matter of law that he did not supervise or control the method and manner of the decedent's work.
4. Whether Litt established entitlement to summary judgment on the Labor Law § 200 and common-law negligence claims.

HOLDINGS

1. The appeal by Elva Castro was dismissed because no appeal lies from an order entered on the default of the appealing party.
2. Litt was not entitled to summary judgment based on the homeowner exemption because he failed to establish prima facie that the purpose of the work was connected to his residential use of the property at the time of the accident.
3. Litt was not entitled to summary judgment because his affidavit and the agreement with Spiotta Construction Management Corp. failed to eliminate triable issues concerning whether he supervised or controlled the decedent's work.
4. Litt was not entitled to summary judgment on the Labor Law § 200 and common-law negligence claims because he failed to address and eliminate factual issues under both potentially applicable liability standards: dangerous premises conditions and means and methods of the work.

KEY QUOTATIONS

"Applicability of the exemption turns on whether the site and purpose of the work was connected to the owner's residential use of the property" and must be based on the owner's intentions at the time of the injury"
 ([*2])

*“Where, as here, the plaintiff alleges that an accident involves both a dangerous condition on the premises and the means and methods of the work, 'the property owner moving for summary judgment with respect to causes of action alleging a violation of Labor Law § 200 is obligated to address the proof applicable to both liability standards.'” ([*2]-[*3])*

*“for all potential concurrent causes of the plaintiff's accident and injury, and . . . no triable issue of fact is raised in opposition as to either relevant liability standard” ([*3])*

FACTUAL BACKGROUND

William Orlando Barzallo-Diaz was allegedly struck and killed by a falling beam weighing approximately 1,000 pounds while working on a construction project at property owned by Marty Litt. The plaintiffs alleged violations of Labor Law §§ 200, 240(1), and 241(6), as well as common-law negligence. Litt submitted an affidavit stating that the property had previously been his family's primary residence and that the family returned after the work was completed, but the evidence did not establish that the work was being performed for residential use at the time of the accident or eliminate factual issues concerning Litt's supervision and control.

PROCEDURAL HISTORY

The plaintiffs, as co-administrators of William Orlando Barzallo-Diaz's estate, brought an action for personal injuries and wrongful death arising from a construction-site accident. Before discovery, including party depositions, was complete, Litt moved for summary judgment based on the one- and two-family dwelling homeowner exemption and lack of supervision or control over the work. Supreme Court, Nassau County, granted the motion; the Appellate Division dismissed Castro's appeal, reversed as to Joselyn Natalia Chiriboga-Herrera, and denied Litt's summary-judgment motion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order was reversed insofar as appealed from by Joselyn Natalia Chiriboga-Herrera, and Litt's branch of the motion seeking summary judgment dismissing the complaint against him was denied. The opinion does not provide additional factual instructions beyond denial of the motion.

CASES CITED

- Argueta v. Hall & Wright, LLC, 230 AD3d 1200, 1201, 1203
- Thorpe v. One Page Park, LLC, 208 AD3d 818, 820
- Moscati v. Consolidated Edison Co. of N.Y., Inc., 168 AD3d 717, 718-720
- Punina v. Canaday, 230 AD3d 706, 706
- Lazo v. Ricci, 178 AD3d 811, 811-812
- Ortega v. Puccia, 57 AD3d 54, 60-61
- Marquez v. Masciosia, 165 AD3d 912, 913

- *Caiazzo v. Mark Joseph Contr., Inc.*, 119 AD3d 718, 721
- *Venter v. Cherkasky*, 200 AD3d 932, 933-934
- *Rajkumar v. Lal*, 170 AD3d 761, 762
- *Pawelic v. Siegel*, 220 AD3d 883, 884
- *Mitchell v. 148th St. Jamaica Condominium*, 221 AD3d 596, 599
- *Valencia v. Glinski*, 219 AD3d 541, 545
- *Wilson v. Bergon Constr. Corp.*, 219 AD3d 1380, 1382-1383
- *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 505
- *Reyes v. Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 52
- *Poulin v. Ultimate Homes, Inc.*, 166 AD3d 667, 673
- *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853