

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

Rodriguez v. RXR Glen Isle Partners LLC

2026 NY Slip Op 01144 (N.Y. Ct. App. 2026) · No. Index Nos. 155931/19, 596051/19, 595975/20; Appeal No. 5933; Case No. 2024-05442 · Decided February 26, 2026

SUMMARY

The Appellate Division, First Department affirmed an order granting conditional summary judgment to RXR-Hunter on its contractual indemnity claims against Custom Services Contracting of NY, Inc. The court held that the plaintiff’s injury arose out of Custom Services’ work, triggering the indemnity provision, while factual issues concerning possible negligence by RXR-Hunter supported conditional rather than unconditional indemnity.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Scarpulla, J.; Kapnick, J.; González, J.; Rodriguez, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	February 26, 2026
DOCKET	Index Nos. 155931/19, 596051/19, 595975/20; Appeal No. 5933; Case No. 2024-05442
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by third-party defendant Custom Services Contracting of NY Inc. from an order granting defendants and third-party plaintiff Hunter Roberts Construction Group, LLC conditional summary judgment on contractual-indemnity claims.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a material issue of fact; conditional indemnity may be granted where the indemnitee's possible negligence remains unresolved.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Custom Services Contracting of NY Inc. v. RXR Glen Isle Partners LLC, RXR Garvies P1 Building H Owner LLC, RXR Garvies P1

TOPICS

construction law contracts summary judgment third party practice civil procedure

PRACTICE AREAS

construction law contract law civil procedure

QUESTIONS PRESENTED

1. Whether RXR-Hunter established prima facie entitlement to conditional summary judgment on its contractual-indemnity claims against CSC.
2. Whether CSC raised a material issue of fact in opposition to RXR-Hunter's motion.
3. Whether conditional indemnity was appropriate because factual issues remained regarding possible negligence by RXR-Hunter.

HOLDINGS

1. RXR-Hunter established prima facie entitlement to conditional summary judgment because Rodriguez's injury occurred while he was performing work for CSC, causing the accident to arise out of CSC's work and triggering CSC's contractual indemnity obligation under the broad performance-of-the-work clause.
2. CSC failed to raise a material issue of fact in opposition to RXR-Hunter's motion.
3. Conditional indemnity was appropriate because factual issues remained regarding possible negligence by RXR-Hunter and the extent to which such negligence may have contributed to the accident.

KEY QUOTATIONS

*“The accident therefore arose out of CSC's work, triggering its contractual obligation to indemnify RXR-Hunter pursuant to the broad performance-of-the-work clause” (*1)*

*“A finding of conditional indemnity was appropriate as issues of fact remain as to possible negligence on the part of RXR-Hunter and the extent to which such negligence may have contributed to the accident” (*1)*

FACTUAL BACKGROUND

Kenny L. Rodriguez was injured while performing work for his employer, Custom Services Contracting of NY Inc. The accident occurred in connection with CSC's work, and RXR-Hunter sought contractual indemnity under a broad performance-of-the-work clause. Issues remained concerning whether RXR-Hunter was negligent and, if so, the extent to which that negligence contributed to the accident.

PROCEDURAL HISTORY

The Supreme Court, New York County, entered an order on August 19, 2024, granting RXR-Hunter conditional summary judgment on its contractual-indemnity claims against CSC. CSC appealed, and the Appellate Division, First Department, unanimously affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- *Travalja v. 135 W. 52nd St. Owner LLC*, 232 AD3d 503, 505 (1st Dep't 2024)
- *McKinney v. Empire State Dev. Corp.*, 217 AD3d 574, 575 (1st Dep't 2023)
- *Alvarado v. SC 142 W. 24 LLC*, 209 AD3d 422, 423 (1st Dep't 2022)
- *Hernandez v. Argo Corp.*, 95 AD3d 782 (1st Dep't 2012)

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