

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

Simone v. Colin Dev., LLC

2026 NY Slip Op 02143 · No. 2022-07309 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying summary judgment motions by the Sims defendants and Colin Development, LLC, in a personal injury action involving Labor Law § 200 and common-law negligence claims. The court held that triable issues remained concerning supervision and control over the plaintiff’s work, the creation or notice of a dangerous condition, and whether Colin was the plaintiff’s special employer. The court also upheld denial of summary judgment on cross-claims for common-law indemnification and contribution.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Paul Wooten, J.; Carl J. Landicino, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 8, 2026
DOCKET	2022-07309
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Sims defendants appealed and Colin Development, LLC, cross-appealed from an order denying their respective motions for summary judgment dismissing Labor Law § 200 and common-law negligence claims and related cross-claims for common-law indemnification and contribution.
STANDARD OF REVIEW	Summary judgment movants must make a prima facie showing of entitlement to judgment as a matter of law by eliminating all triable issues of fact; failure to meet that burden requires denial of the motion regardless of the sufficiency of the opposing papers.
PRECEDENTIAL VALUE	Published New York Appellate Division decision

PARTIES

F.W. Sims Group, Inc., F.W. Sims Mechanical Services, LLC, F.W. Sims, LLC, Colin Development, LLC v. Russell A. Simone, Sr.

TOPICS

personal injury negligence premises liability standard of care appellate procedure

PRACTICE AREAS

personal injury construction law torts appellate procedure

QUESTIONS PRESENTED

1. Whether the Sims defendants established entitlement to summary judgment dismissing the Labor Law § 200 and common-law negligence claims by showing that they lacked authority to supervise or control the plaintiff's work and lacked actual or constructive notice of the dangerous condition.
2. Whether Colin Development, LLC, established as a matter of law that the plaintiff was its special employee and that the Workers' Compensation Law's exclusivity provisions barred the Labor Law § 200 and common-law negligence claims.
3. Whether the defendants were entitled to summary judgment dismissing the cross-claims for common-law indemnification and contribution.

HOLDINGS

1. The Sims defendants were not entitled to summary judgment because they failed to eliminate triable issues of fact concerning whether their technician directed the plaintiff to manually turn on the HVAC unit and whether their employee created or had actual or constructive notice of the dangerous condition associated with setting up the ladder.
2. Colin Development, LLC, was not entitled to summary judgment because it failed to establish prima facie that the plaintiff was its special employee or that it controlled and directed the manner, details, and ultimate result of his work.
3. The defendants were not entitled to summary judgment dismissing the cross-claims for common-law indemnification and contribution because they failed to establish prima facie entitlement to dismissal of the underlying Labor Law § 200 and common-law negligence claims.

KEY QUOTATIONS

“Where . . . an accident is alleged to involve defects in both the premises and the manner in which the work was performed, a defendant moving for summary judgment dismissing a cause of action alleging a violation of Labor Law § 200 is obligated to address the proof applicable to both liability standards” ([*1])

“The determination of special employment status is usually a question of fact and may only be made as a matter of law where the particular, undisputed critical facts compel that conclusion and present no triable issue of fact” ([*2])

FACTUAL BACKGROUND

The plaintiff was employed as a superintendent by Hauppauge Office Park Associates, LLC, which owned the office-building complex. Colin Development, LLC, acted as property manager, while the Sims defendants provided HVAC services. The plaintiff allegedly was injured while standing on a ladder and attempting to manually turn on a rooftop HVAC unit; he claimed that the accident involved both a dangerous condition and the manner in which he was directed to perform the work.

PROCEDURAL HISTORY

Simone brought a personal-injury action after falling from a ladder while attempting to manually activate a rooftop HVAC unit. The Sims defendants moved for summary judgment, and Colin cross-moved, seeking dismissal of the Labor Law § 200 and negligence claims and the related indemnification and contribution cross-claims. The Supreme Court, Suffolk County, denied the relevant branches of both motions, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Magistro v New York City Hous. Auth., 235 AD3d 733, 735
- Novegil-Peralta v Rettig, 240 AD3d 796, 798
- Wright v Pennings, 233 AD3d 827, 830
- Shaughnessy v Huntington Hosp. Assn., 147 AD3d 994, 997-998
- Moscati v Consolidated Edison Co. of N.Y., Inc., 168 AD3d 717, 720-721
- Mitchell v Caton on the Park, LLC, 167 AD3d 865, 867
- Rodriguez v HY 38 Owner, LLC, 192 AD3d 839, 841
- Chiloyan v Chiloyan, 197 AD3d 612, 614-615
- Miolan v Milmar Food Group, LLC, 229 AD3d 696, 697
- James v Highland Rehabilitation & Nursing Ctr., 222 AD3d 736, 737-738
- Narvaez v Petrillo Contr., Inc., 237 AD3d 725, 728
- Rodriguez v 27-11 49th Ave. Realty, LLC, 222 AD3d 1013, 1014
- Thompson v Grumman Aerospace Corp., 78 NY2d 553, 557
- Ortega v 669 Meeker Ave., LLC, 191 AD3d 686, 688-689
- Rosario v Horizon Networks, Inc., 240 AD3d 537, 541
- Titov v V & M Chelsea Prop., LLC, 230 AD3d 614, 620-621

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