

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., González, Shulman, Pitt-Burke, Chan, JJ.

5769

JAVON GORDON et al.,
Plaintiffs-Respondents,

Index No. 656523/22
Case No. 2025-00122

-against-

TRIUMPH CONSTRUCTION CORP.,
Defendant-Appellant,

CONE HEADS LTD., et al.,
Defendants.

Cole Schotz P.C., New York (Courtney Gabrielle Hindin of counsel), for appellant.

Pelton Graham LLC, New York (Brent E. Pelton of counsel), for respondents.

Order, Supreme Court, New York County (Lori S. Sattler, J.), entered on November 27, 2024, which denied defendant Triumph Construction Corp.'s motion pursuant to CPLR 3211(a)(7) to dismiss plaintiffs' first cause of action for breach of contract, unanimously affirmed, with costs.

The motion court correctly denied Triumph's motion to dismiss. As workers employed pursuant to public works contracts, plaintiffs have both an administrative remedy under Labor Law § 220(3)(a) and a third-party right to assert a breach of contract claim for underpayment against the general contractor (*see Wroble v Shaw Envtl. & Infrastructure Eng'g of N.Y., P.C.*, 166 AD3d 520, 521 [1st Dept 2018]; *Santana v San Mateo Constr. Corp.*, 234 AD3d 562, 563 [1st Dept 2025]). Thus, exhaustion of administrative remedies is not required (*see also Nawrocki v Proto Constr. & Dev. Corp.*, 82 AD3d 534, 536 [1st Dept 2011]). *Van Osten v Huicatao Corp.* (2024 NY Slip

Op 34728[U] [Sup Ct, Queens County 2024]) is nonbinding and does not warrant a different result (*see McMillan v Out-look Safety LLC.*, 241 AD3d 1162, 1162 [1st Dept 2025]; *see also Herman v Judlau Contr., Inc.*, 243 AD3d 441, 442 [1st Dept 2025]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: February 5, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court