

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 30th day of October, two thousand thirteen.

PRESENT: ROBERT A. KATZMANN,
Chief Judge,
DENNIS JACOBS,
JOSÉ A. CABRANES,
ROSEMARY S. POOLER,
REENA RAGGI,
RICHARD C. WESLEY,
PETER W. HALL,
DEBRA ANN LIVINGSTON,
GERARD E. LYNCH,
DENNY CHIN,
RAYMOND J. LOHIER, JR.,
SUSAN L. CARNEY,
CHRISTOPHER F. DRONEY,
Circuit Judges.

- - - - -X

JOSÉ E. CARRION,
Plaintiff-Appellant,

- v. -

11-5098, 11-5334

AGFA CONSTRUCTION, INC.
Defendant-Appellee.

- - - - -X

FOR APPELLANT: Michael G. O'Neill, New York, NY.

FOR APPELLEE: Joseph M. Labuda, Milman Labuda Law Group, PLLC, Lake Success, NY.

ORDER

Following disposition of this appeal on June 13, 2013, an active judge of the Court requested a poll on whether to rehear the case en banc. A poll having been conducted and there being no majority favoring en banc review, rehearing en banc is hereby **DENIED**.

Gerard E. Lynch, Circuit Judge, dissents by opinion from the denial of rehearing en banc.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK

1 GERARD E. LYNCH, Circuit Judge, dissenting:

2 I dissent for the reasons stated in my dissent in Grochowski v. Phoenix Constr., 318 F.3d
3 80, 89 (2d Cir. 2003) (Lynch, D.J., dissenting), and by the New York Court of Appeals in Cox v.
4 NAP Constr. Co., 10 N.Y.3d 592 (2008).