

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

Romano v. Welsbach Elec. Corp.

2026 NY Slip Op 00809 (N.Y. Ct. App. 2026) · No. 2023-09018 · Decided February 11, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying Welsbach Electric Corp.'s motion for summary judgment in a personal-injury action arising from a pothole accident. The court held that the motion was premature because further discovery, including depositions of City employees, might produce relevant evidence concerning whether Welsbach caused, created, or exacerbated the pothole.

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.; Linda Christopher, J.; Lillian Wan, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 11, 2026
DOCKET	2023-09018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying its motion for summary judgment dismissing the complaint, with leave to renew upon completion of discovery.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Supreme Court properly denied summary judgment as premature under CPLR 3212(f).
PRECEDENTIAL VALUE	published
PARTIES	Welsbach Electric Corp. v. Tony Romano

TOPICS

- summary judgment
- civil procedure
- personal injury
- construction law
- appellate procedure

PRACTICE AREAS

civil procedure

personal injury

construction law

municipal law

QUESTIONS PRESENTED

1. Whether Welsbach's motion for summary judgment was properly denied as premature before completion of discovery.
2. Whether the plaintiff demonstrated that further discovery might lead to relevant evidence concerning whether Welsbach caused or created the pothole or exacerbated its defective condition.

HOLDINGS

1. A summary judgment motion may properly be denied as premature when the nonmoving party demonstrates that further discovery might lead to relevant evidence or that facts necessary to oppose the motion are exclusively within the movant's knowledge or control. The plaintiff made that showing here.

KEY QUOTATIONS

*“The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion” ([*1])*

FACTUAL BACKGROUND

In April 2017, Romano allegedly tripped and injured his ankle while crossing 10th Avenue at 63rd Street in Brooklyn, stepping into a pothole in a designated crosswalk. He first sued the City of New York and later sued Welsbach Electric Corp., which had contracted with the City to install traffic equipment and underground conduits at the intersection. Romano alleged that Welsbach caused, created, allowed, or permitted the pothole to exist. Discovery was incomplete when Welsbach moved for summary judgment.

PROCEDURAL HISTORY

Romano sued the City of New York after tripping in a pothole at a Brooklyn intersection. He later commenced this action against Welsbach Electric Corp., the City's municipal electrical contractor, alleging that Welsbach caused or created the pothole. The Supreme Court, Kings County, joined the two actions for discovery and trial while retaining separate index numbers. Before discovery was complete, Welsbach moved for summary judgment; the court denied the motion as premature and granted leave to renew after discovery. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Brea v. Salvatore, 130 AD3d 956, 956
- Bernstein v. New York City Tr. Auth., 153 AD3d 897, 897-898

- Min Gyo Cho v. Marcario, 238 AD3d 703, 703-704
- Knowles v. 21-43 27th St., LLC, 224 AD3d 737, 737-738
- Cajas-Romero v. Ward, 106 AD3d 850, 852
- Tone v. Studin, 148 AD3d 1205, 1206
- Lopez v. WS Distrib., Inc., 34 AD3d 759, 760
- Rodriguez v. County of Westchester, 120 AD3d 1331, 1331

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