

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

De Perez v. Fordham Valentine Associates LLC

2026 NY Slip Op 01594 (N.Y. Ct. App. 2026) · No. Appeal No. 6162; Case No. 2024-06289; Index No. 817049/22 · Decided March 19, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the denial of Pav-Lak Contracting Inc.'s motion to dismiss claims arising from a trip-and-fall accident on a sidewalk. The court held that the contractor's daily logs and photographs did not conclusively establish a defense and that evidence of a prior Department of Transportation violation raised an issue of fact regarding whether the contractor launched a force or instrument of harm.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Friedman, J.; Gesmer, J.; O'Neill Levy, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 19, 2026
DOCKET	Appeal No. 6162; Case No. 2024-06289; Index No. 817049/22
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Pav-Lak Contracting Inc. appealed from an order denying its CPLR 3211(a)(1) and (7) motion to dismiss the complaint and all cross-claims against it.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, documentary evidence must conclusively establish a defense as a matter of law. On a CPLR 3211(a)(7) motion, the court determines whether the pleading states a cognizable cause of action, accepting the pleaded facts as true and according the plaintiff the benefit of every favorable inference.
PRECEDENTIAL VALUE	Published
PARTIES	Pav-Lak Contracting Inc. v. Nelly De Perez

TOPICS

negligence

construction law

motions to dismiss

standard of review

appellate procedure

PRACTICE AREAS

Torts

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QUESTIONS PRESENTED

1. Whether Pav-Lak's daily logs and photographs conclusively established a defense to De Perez's negligence claims under CPLR 3211(a)(1).
2. Whether De Perez's evidence raised an issue of fact as to whether Pav-Lak launched a force or instrument of harm that caused the sidewalk accident.
3. Whether sanctions were warranted because De Perez's claims were frivolous.

HOLDINGS

1. Pav-Lak's daily logs and photographs did not conclusively establish that it performed no work on the sidewalk before De Perez's accident and therefore did not establish a defense as a matter of law.
2. De Perez raised an issue of fact as to whether Pav-Lak may have launched a force or instrument of harm that caused the accident, precluding dismissal at this stage.
3. Sanctions were not warranted because De Perez's claims could not be deemed frivolous.

KEY QUOTATIONS

*“Accordingly, the documentary evidence did not conclusively establish a defense to plaintiff’s asserted claims as a matter of law” ([*1])*

*“Therefore, at this juncture, an issue of fact exists as to whether defendant may have launched a force or instrument of harm that caused plaintiff’s accident” ([*1])*

FACTUAL BACKGROUND

De Perez allegedly tripped and fell on a sidewalk where Pav-Lak had been hired to perform construction work. Pav-Lak relied on daily logs and photographs to argue that it had not performed work on the sidewalk before the accident. De Perez submitted evidence that approximately two months before the accident Pav-Lak received a New York City Department of Transportation violation for maintaining a plywood fence on the sidewalk without a permit.

PROCEDURAL HISTORY

Nelly De Perez brought a negligence action arising from a trip and fall on a sidewalk. Supreme Court, Bronx County, denied Pav-Lak's motion to dismiss based on documentary evidence and failure to state a cause of action. The Appellate Division, First Department unanimously affirmed to the extent appealed from, without costs.

DISPOSITION

affirmed

CASES CITED

- *Spoleta Constr., LLC v. Aspen Ins. UK Ltd.*, 27 N.Y.3d 933, 936 (2016)
- *Espinal v. Melville Snow Contractors, Inc.*, 98 N.Y.2d 136, 140 (2002)

OPINION

De Perez v. Fordham Valentine Assoc. LLC 2026 NY Slip Op 01594

PER CURIAM.

De Perez v Fordham Valentine Assoc. LLC (2026 NY Slip Op 01594) De Perez v Fordham Valentine Assoc. LLC 2026 NY Slip Op 01594 Decided on March 19, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 19, 2026 Before: Moulton, J.P., Friedman, Gesmer, O'Neill Levy, Chan, JJ. Index No. 817049/22|Appeal No. 6162|Case No. 2024-06289| [*1]Nelly De Perez, Plaintiff-Respondent, v Fordham Valentine Associates LLC, Defendant-Respondent, City of New York et al., Defendants, Pav-Lak Contracting Inc., Defendant-Appellant. O'Toole Scrivo. LLC, New York (Larry C. Green of counsel), for appellant. Omrani & Taub, P.C., New York (James L. Forde of counsel), for Nelly De Perez, respondent. Order, Supreme Court, Bronx County (Mitchel J. Danziger, J.), entered on or about September 26, 2024, which, to the extent appealed from, denied defendant Pav-Lak Contracting Inc.'s motion pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint and all cross-claims as against it, unanimously affirmed, without costs. In this negligence action involving a trip and fall on a sidewalk, the motion court properly determined that daily logs with photographs relied upon by defendant, a contractor hired to perform construction work at the premises, failed to demonstrate that it did not perform any work on the sidewalk before plaintiff's accident. Accordingly, the documentary evidence did not conclusively establish a defense to plaintiff's asserted claims as a matter of law (see *Spoleta Constr., LLC v Aspen Ins. UK Ltd.* , 27 NY3d 933, 936 [2016]). In any event, plaintiff raised an issue of fact in opposition to the motion by submitting evidence that, approximately two months before plaintiff's accident, defendant received a violation from the New York City Department of Transportation for maintaining a plywood fence on the sidewalk without a permit. Therefore, at this juncture, an issue of fact exists as to whether defendant may have launched a force or instrument of harm that caused plaintiff's accident (see *Espinal v Melville Snow Contractors, Inc.* , 98 NY2d 136, 140 [2002]). We reject defendant's request for sanctions because plaintiff's claims cannot be deemed frivolous. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 19, 2026

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