

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

O'Sullivan v. American Golf Corp.

2026 NY Slip Op 03393 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 29772/19; Appeal No. 6766; Case No. 2025-01708 · Decided June 2, 2026

SUMMARY

The Appellate Division, First Department, affirmed the denial of American Golf Corporation’s motion for summary judgment in a premises-liability action. The court held that American Golf failed to establish that the gap between cobblestones was open and obvious and not inherently dangerous, and that factual issues remained regarding its duty to maintain the parking area safely.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, First Department                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Moulton, J.P.; Kapnick, J.; González, J.; Shulman, J.; Chan, J.                                                                                                                                                                                                                                      |
| JURISDICTION          | New York Supreme Court, Appellate Division, First Department                                                                                                                                                                                                                                         |
| DECIDED               | June 2, 2026                                                                                                                                                                                                                                                                                         |
| DOCKET                | Index No. 29772/19; Appeal No. 6766; Case No. 2025-01708                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | American Golf appealed from an order of Supreme Court, Bronx County, denying its motion for summary judgment dismissing the complaint against it.                                                                                                                                                    |
| STANDARD OF REVIEW    | On a motion for summary judgment, the movant bears the initial burden of establishing prima facie entitlement to judgment as a matter of law. If the movant fails to meet that burden, the burden does not shift to the opposing party and the sufficiency of the opposition need not be considered. |
| PRECEDENTIAL VALUE    | Published intermediate appellate decision                                                                                                                                                                                                                                                            |
| PARTIES               | American Golf Corporation doing business as Pelham Bay & Split Rock Golf Course v. David O'Sullivan, Omega Express, Ltd.                                                                                                                                                                             |

TOPICS

premises liability

summary judgment

duty of care

standard of care

appellate procedure

## PRACTICE AREAS

premises liability

personal injury

summary judgment

negligence

## QUESTIONS PRESENTED

1. Whether American Golf established prima facie entitlement to summary judgment by proving that the gap between the cobblestones was open and obvious and not inherently dangerous.
2. Whether an issue of fact existed as to whether American Golf breached its duty to maintain the parking area in a reasonably safe condition.
3. Whether the burden shifted to plaintiff to establish a triable issue of fact.

## HOLDINGS

1. American Golf failed to establish prima facie entitlement to summary judgment because it did not submit evidence showing as a matter of law that the gap was open and obvious and not inherently dangerous.
2. A triable issue of fact existed as to whether American Golf breached its duty to plaintiff to maintain the area in a reasonably safe condition.
3. Because American Golf failed to meet its initial burden, the burden never shifted to plaintiff, and the court need not consider the sufficiency of plaintiff's opposition papers.

## FACTUAL BACKGROUND

Plaintiff alleged that, while exiting a bus, his foot became caught in a three-to-four-inch gap between two cobblestones in a parking lot owned by American Golf, causing injury. Plaintiff testified that the defect was not readily observable even though he was looking down as he exited the bus. American Golf's expert inspected the area approximately five years after the accident and stated that there were no defects in the cobblestones, but did not address the width or depth of the gaps. American Golf's regional manager did not testify about the cobblestones' installation, inspection, maintenance, or any prior complaints.

## PROCEDURAL HISTORY

Plaintiff sued American Golf and Omega Express after allegedly sustaining an injury while exiting a bus in a parking lot owned by American Golf. Supreme Court, Bronx County, denied American Golf's motion for summary judgment. The First Department unanimously affirmed the order insofar as appealed from.

## DISPOSITION

affirmed

## CASES CITED

- Basturan v. New York City Tr. Auth., 231 AD3d 528, 529 [1st Dept 2024]
- Santulli v. City of New York, 287 AD2d 352, 353 [1st Dept 2001]
- Garcia v. The Jesuits of Fordham, 6 AD3d 163, 166 [1st Dept 2004]
- Qeliqi v. Gladden Properties LLC, 226 AD3d 543 [1st Dept 2024]
- Hutson v. Regis High Sch., 226 AD3d 478, 479 [1st Dept 2024]
- Pronk v. Standard Hotel, 158 AD3d 465, 466 [1st Dept 2018]

## OPINION

### PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. David O'Sullivan, Plaintiff-Respondent, v American Golf Corporation Doing Business as Pelham Bay & Split Rock Golf Course, Defendant-Appellant, Omega Express, Ltd., Defendant-Respondent. Decided and Entered: June 02, 2026 Index No. 29772/19|Appeal No. 6766|Case No. 2025-01708| Before: Moulton, J.P., Kapnick, González, Shulman, Chan, JJ. Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Julia Audibert of counsel), for appellant.

Law Offices of Richard A. Dubi, PC, Garden City (Richard A. Dubi of counsel), for David O'Sullivan, respondent. Capehart & Scatchard, P.A., New York (Nuo Jiang of counsel), for Omega Express Ltd., respondent. [\*1] Order, Supreme Court, Bronx County (Patsy Gouldborne, J.), entered January 6, 2025, which, to the extent appealed from as limited by the briefs, denied the motion of defendant American Golf Corporation for summary judgment dismissing the complaint as against it, unanimously affirmed, without costs.

Plaintiff alleges that as he was exiting a bus, he was injured when his foot got caught in a three-to-four-inch gap between two cobblestones in a parking lot owned by American Golf. American Golf failed to establish prima facie entitlement to summary judgment, as it failed to submit evidence showing as a matter of law that the gap between the cobblestones was an open and obvious condition and was not inherently dangerous ( see Basturan v New York City Tr.

Auth., 231 AD3d 528, 529 [1st Dept 2024]; Santulli v City of New York, 287 AD2d 352, 353 [1st Dept 2001]). Indeed, plaintiff testified that the defect was not readily observable even though he was looking down as he exited the bus.

Although American Golf's expert averred in his affidavit that there were "no defects" in the cobblestones, he did not address the width or depth of the gaps between them ( see *Garcia v The Jesuits of Fordham*, 6 AD3d 163, 166 [1st Dept 2004]). Further, because the expert inspected the area five years after the alleged accident, his affidavit is of limited probative value without evidence that the conditions observed were the same as when the accident occurred ( see *Qeliqui v Gladden Properties LLC*, 226 AD3d 543 [1st Dept 2024]).

In addition, an issue of fact exists as to whether American Golf breached its duty to plaintiff to maintain the area in a reasonably safe condition ( see *Hutson v Regis High Sch.*, 226 AD3d 478, 479 [1st Dept 2024]). American Golf's regional manager, who was deposed on behalf of American Golf, did not testify regarding the initial installation or subsequent inspection and maintenance of the cobblestones, nor did he testify as to whether American Golf had received any complaints about the cobblestones before the accident.

Because American Golf failed to sustain its initial burden on its motion for summary judgment, the burden never shifted to plaintiff and we need not consider the sufficiency of his opposition papers ( see *Pronk v Standard Hotel*, 158 AD3d 465, 466 [1st Dept 2018]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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