

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]

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