

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

Kenny v. Hellerman

Kenny, 2026 NY Slip Op 02638 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2025-04432 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order denying Eric and Leslie Gulkis summary judgment on Thomas Kenny's claim under General Obligations Law § 11-100. The court held that the defendants established that Matthew Hellerman was not intoxicated when the alleged assault occurred, and Kenny failed to raise a triable issue of fact. The court therefore dismissed the § 11-100 cause of action against the Gulkis defendants.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Deborah A. Dowling, J.; Lillian Wan, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 29, 2026
DOCKET	2025-04432
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants Eric Gulkis and Leslie Gulkis appealed from an order denying their motion for summary judgment dismissing the cause of action alleging a violation of General Obligations Law § 11-100.
STANDARD OF REVIEW	On a summary-judgment motion, the movant must establish prima facie entitlement to judgment as a matter of law; if that burden is met, the opposing party must raise a triable issue of fact.
PRECEDENTIAL VALUE	Published intermediate appellate decision; precedential under New York law, subject to the opinion's stated uncorrected status.
PARTIES	Eric Gulkis, Leslie Gulkis v. Thomas Kenny

TOPICS

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summary judgment

personal injury

appellate procedure

statutory interpretation

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dram shop liability

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QUESTIONS PRESENTED

1. Whether the Gulkis defendants were entitled to summary judgment dismissing Kenny's General Obligations Law § 11-100 claim.
2. Whether the evidence raised a triable issue of fact concerning Hellerman's intoxication at the time of the alleged assault.

HOLDINGS

1. Liability under General Obligations Law § 11-100 requires proof that the provider knowingly caused intoxication by furnishing alcohol to, or assisting in procuring alcohol for, a person known or reasonably believed to be underage; because the evidence established that Hellerman was not intoxicated at the relevant time, the Gulkis defendants were entitled to summary judgment.
2. Kenny failed to raise a triable issue of fact because conflicting evidence concerning whether Hellerman consumed alcohol did not constitute evidence that he was intoxicated.

KEY QUOTATIONS

"Liability under General Obligations Law § 11-100 may be imposed only on a person who knowingly causes intoxication by furnishing alcohol to (or assisting in the procurement of alcohol for) persons known or reasonably believed to be underage" ([*2])

"Although the record includes conflicting testimony as to whether Hellerman consumed alcohol prior to the incident, there is no testimony to support the plaintiff's assertion that Hellerman was 'intoxicated,' as required by the statute." ([*2])

FACTUAL BACKGROUND

Thomas Kenny was allegedly assaulted by Matthew Hellerman on the front lawn of Eric and Leslie Gulkis's home while both men attended a party hosted by the Gulkises' teenage daughter. Hellerman was under the legal drinking age, and Kenny alleged that the Gulkis defendants violated General Obligations Law § 11-100 by unlawfully furnishing or assisting in procuring alcohol for him. The Gulkis defendants submitted deposition testimony, including Hellerman's testimony that he had not consumed alcohol for 24 hours before the incident, and the witnesses did not describe him as intoxicated or appearing intoxicated.

PROCEDURAL HISTORY

Thomas Kenny commenced a personal-injury action against Matthew Hellerman and Eric and Leslie Gulkis after an alleged assault at the Gulkises' home. Following discovery, the Gulkis defendants moved for summary judgment on the General Obligations Law § 11-100 claim. The Supreme Court, Nassau County, denied that

branch of the motion, and the Appellate Division reversed insofar as appealed from and granted summary judgment to the Gulkis defendants.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None stated; the Appellate Division granted the branch of the Gulkis defendants' summary-judgment motion seeking dismissal of the General Obligations Law § 11-100 cause of action.

CASES CITED

- Heins v. Vanbourgondien, 180 A.D.3d 1019, 1024 (N.Y. App. Div. 2020)
- Rust v. Reyer, 91 N.Y.2d 355, 359 (N.Y. 1998)
- Filc v. 7221 Someplace Else, Ltd., 219 A.D.3d 1487, 1488 (N.Y. App. Div. 2023)
- Ferber v. Olde Erie Brew Pub & Grill, LLC, 161 A.D.3d 1142, 1143 (N.Y. App. Div. 2018)
- Sherman v. Robinson, 80 N.Y.2d 483, 487-488 (N.Y. 1992)
- Gaige v. Kepler, 303 A.D.2d 626, 628 (N.Y. App. Div. 2003)
- Nelson v. Neng, 297 A.D.2d 313, 314 (N.Y. App. Div. 2002)
- Guercia v. Carter, 274 A.D.2d 553, 554 (N.Y. App. Div. 2000)
- Kelly v. P.B.L. Enters., 228 A.D.2d 414, 415 (N.Y. App. Div. 1996)

OPINION

PER CURIAM.

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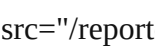
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Kenny v Hellerman

2026 NY Slip Op 02638

April 29, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Thomas Kenny, respondent,

v

Matthew Hellerman, defendant, Eric Gulkis, et al., appellants.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 29, 2026 2025-04432, (Index No. 605034/23) Lara J. Genovesi, J.P. Deborah A. Dowling Lillian Wan Susan Quirk, JJ. Peirce & Salvato, PLLC, White Plains, NY (Richard A. Salvato, Karin Arrospide, and Kelly M. Zic of counsel), for appellants. Morelli Law Firm, PLLC, New York, NY (Sara A. Mahoney and Perry S. Fallick of counsel), for respondent.

DECISION & ORDER

In an action to recover damages for personal injuries, the defendants Eric Gulkis and Leslie Gulkis appeal from an order of the Supreme Court, Nassau County (Rhonda E. Fischer, J.), dated March 25, 2025.

The order, insofar as appealed from, denied that branch of the motion of those defendants which was for summary judgment dismissing the cause of action alleging a violation of General Obligations Law § 11-100 insofar as asserted against them. ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendants Eric Gulkis and Leslie Gulkis which was for summary judgment dismissing the cause of action alleging a violation of General Obligations Law § 11-100 insofar as asserted against them is granted. The plaintiff allegedly was assaulted by the defendant Matthew Hellerman on the front lawn of the home of the defendants Eric Gulkis and Leslie Gulkis (hereinafter together the Gulkis defendants).

The plaintiff and Hellerman were both attending a party at the Gulkis defendants' home, which was hosted by the Gulkis defendants' teenage daughter. The plaintiff commenced this action to recover damages for personal injuries against Hellerman and the Gulkis defendants.

The plaintiff alleged, inter alia, that the Gulkis defendants violated General Obligations Law § 11-100. Following discovery, the Gulkis defendants moved, among other things, for summary judgment dismissing the cause of action alleging a violation of General Obligations Law § 11-100 insofar as asserted against them.

The plaintiff opposed. In an order dated March 25, 2025, the Supreme Court, inter alia, denied that branch of the Gulkis defendants' motion. "General Obligations Law § 11-101(1), known as the Dram Shop Act, provides that any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person,... shall have a right of action against any person who shall, by unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication" (*Heins v Vanbourgondien*, 180 AD3d 1019, 1024 [brackets and internal quotation marks omitted]).

In 1983, the Legislature supplemented the Dram Shop Act by adding General Obligations Law § 11-100, which applies to any provider unlawfully furnishing alcoholic beverages for minors (*see Rust v Reyer*, 91 NY2d 355, 359; *Filc v 7221 Someplace Else, Ltd.*, 219 AD3d 1487, 1488). "Liability under General Obligations Law § 11-

100 may be imposed only on a person who knowingly causes intoxication by furnishing alcohol to (or assisting in the procurement of alcohol for) persons known or reasonably believed to be underage" (*Filc v 7221 Someplace Else, Ltd.*, 219 AD3d at 1488 [brackets and internal quotation marks omitted], quoting *Ferber v Olde Erie Brew Pub & Grill, LLC*, 161 AD3d 1142, 1143; *see* *Sherman v Robinson*, 80 NY2d 483, 487-488).

The Gulkis defendants established their prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging a violation of General Obligations Law § 11-100 insofar as asserted against them.

The Gulkis defendants established that Hellerman, who was then under the legal drinking age, was not intoxicated at the time of the alleged assault (*see* *Gaige v Kepler*, 303 AD2d 626, 628). The Gulkis defendants submitted transcripts of deposition testimony, including Hellerman's own testimony that he did not consume alcohol for 24 hours prior to the incident.

Therefore, the Gulkis defendants met their burden and established that the plaintiff cannot recover under the statute (*see* *Nelson v Neng*, 297 AD2d 313, 314; *Guercia v Carter*, 274 AD2d 553, 554).

In opposition, the plaintiff failed to raise a triable issue of fact.

Although the record includes conflicting testimony as to whether Hellerman consumed alcohol prior to the incident, there is no testimony to support the plaintiff's assertion that Hellerman was "intoxicated," as required by the statute.

The witnesses do not describe Hellerman as intoxicated, nor do they imply that he appeared intoxicated, such that his language was slurred or demeanor sloppy (*cf.* *Kelly v P.B.L. Enters.*, 228 AD2d 414, 415).

The plaintiff's conclusory speculation is insufficient to defeat that branch of the Gulkis defendants' motion which was for summary judgment dismissing the cause of action alleging a violation of General Obligations Law § 11-100 insofar as asserted against them (*see* *Guercia v Carter*, 274 AD2d at 554).

Accordingly, the Supreme Court should have granted that branch of the motion (*see* *Nelson v Neng*, 297 AD2d at 314; *Guercia v Carter*, 274 AD2d at 554).

The Gulkis defendants' remaining contentions need not be reached in light of our determination.

GENOVESI, J.P., DOWLING, WAN and QUIRK, JJ., concur.

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PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Thomas Kenny, respondent, v Matthew Hellerman, defendant, Eric Gulkis, et al., appellants. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on April 29, 2026 2025-04432, (Index No. 605034/23) Lara J. Genovesi, J.P. Deborah A. Dowling Lillian Wan Susan Quirk, JJ. Peirce & Salvato, PLLC, White Plains, NY (Richard A. Salvato, Karin Arrospide, and Kelly M. Zic of counsel), for appellants.

Morelli Law Firm, PLLC, New York, NY (Sara A. Mahoney and Perry S. Fallick of counsel), for respondent. [*1] DECISION & ORDER In an action to recover damages for personal injuries, the defendants Eric Gulkis and Leslie Gulkis appeal from an order of the Supreme Court, Nassau County (Rhonda E. Fischer, J.), dated March 25, 2025.

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alleging a violation of General Obligations Law § 11-100 insofar as asserted against them (see *Guercia v Carter*, 274 AD2d at 554).

Accordingly, the Supreme Court should have granted that branch of the motion (see *Nelson v Neng*, 297 AD2d at 314; *Guercia v Carter*, 274 AD2d at 554). The Gulkis defendants' remaining contentions need not be reached in light of our determination. GENOVESI, J.P., DOWLING, WAN and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.