

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

Lewis v. 311 Realty, LLC

2022 N.Y. Slip Op. 00505 (App. Div. Jan. 27 2022) · No. Appeal No. 15155; Case No. 2021-02849; Index No. 21816/17E · Decided January 27, 2022

SUMMARY

The Appellate Division, First Department reversed the denial of the defendant's motion for summary judgment in a slip-and-fall action. The court held that the storm in progress doctrine applied and that the plaintiff failed to raise a triable issue that the defendant's snow-removal activities created or exacerbated the hazardous condition.

CASE DETAILS

|                       |                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                      |
| WRITING FOR THE COURT | Acosta, P.J.; Renwick, J.; Moulton, J.; Scarpulla, J.; Higgitt, J.                                                                                                |
| JURISDICTION          | New York                                                                                                                                                          |
| DECIDED               | January 27, 2022                                                                                                                                                  |
| DOCKET                | Appeal No. 15155; Case No. 2021-02849; Index No. 21816/17E                                                                                                        |
| DISPOSITION           | reversed                                                                                                                                                          |
| PROCEDURAL POSTURE    | Defendant appealed from an order denying its motion for summary judgment dismissing the complaint in a slip-and-fall action.                                      |
| STANDARD OF REVIEW    | Summary judgment is proper where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. |
| PRECEDENTIAL VALUE    | Published appellate opinion; precedential under applicable New York law.                                                                                          |
| PARTIES               | 311 Realty, LLC v. Bernie Lewis                                                                                                                                   |

TOPICS

- premises liability
- negligence
- summary judgment
- standard of care
- appellate procedure

PRACTICE AREAS

premises liability

negligence

summary judgment

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether defendant established entitlement to summary judgment under New York's storm-in-progress doctrine.
2. Whether plaintiff raised a triable issue of fact that defendant's snow-removal activities created or exacerbated the dangerous condition.

## HOLDINGS

1. A landowner's duty to take reasonable measures to remedy a dangerous condition caused by a storm is suspended while the storm is ongoing and until a reasonable time after it ends; defendant established prima facie entitlement to summary judgment by showing that a winter storm was in progress when plaintiff fell.
2. After defendant showed that the storm-in-progress doctrine applied, plaintiff could defeat summary judgment only by raising a triable issue of fact that defendant's snow-removal activities created or exacerbated the hazardous condition; plaintiff failed to do so.

## KEY QUOTATIONS

*“Under the storm in progress doctrine, a landowner's duty to take reasonable measures to remedy a dangerous condition caused by a storm is suspended while the storm is ongoing until a reasonable time after the storm has ended” ([\*1])*

## FACTUAL BACKGROUND

Bernie Lewis slipped and fell on an exterior landing in front of 311 Realty, LLC's building during a winter storm. The defendant submitted climatological records and a meteorologist's affidavit establishing that the storm was in progress when the accident occurred. The plaintiff conceded that the storm was ongoing and did not allege that defendant's snow or ice removal activities created or worsened the hazardous condition.

## PROCEDURAL HISTORY

The Supreme Court, Bronx County, denied defendant's motion for summary judgment. The Appellate Division, First Department, unanimously reversed on the law, granted the motion, and directed entry of judgment for defendant.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

The motion for summary judgment was granted, and the Clerk was directed to enter judgment accordingly.

## CASES CITED

- Weinberger v 52 Duane Assoc. LLC, 102 A.D.3d 618, 619 (1st Dep't 2013)
- Pippo v City of New York, 43 A.D.3d 303, 304 (1st Dep't 2007)
- Baumann v Dawn Liqs., Inc., 148 A.D.3d 535, 537 (1st Dep't 2017)
- Pipero v New York City Tr. Auth., 69 A.D.3d 493 (1st Dep't 2010)

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