

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

Adames v. Galaxy Gen. Contr. Corp.

2026 NY Slip Op 03054 (1st Dep't 2026) · No. Index No. 802231/23; Appeal No. 6612; Case No. 2025-00235 · Decided May 14, 2026

SUMMARY

The Appellate Division, First Department, affirmed an order granting Galaxy General Contracting Corp. summary judgment dismissing the plaintiff's complaint. The court held that the plaintiff failed to raise a triable issue of fact connecting Galaxy's permitted roadwork to the roadway defect, and rejected arguments concerning premature discovery and the sufficiency of Galaxy's affidavit.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; González, J.; Pitt-Burke, J.; Higgitt, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 14, 2026
DOCKET	Index No. 802231/23; Appeal No. 6612; Case No. 2025-00235
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting Galaxy General Contracting Corp.'s motion for summary judgment dismissing the complaint against it.
STANDARD OF REVIEW	Summary judgment is proper where the movant meets its prima facie burden and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; precedential within the applicable state-court hierarchy, subject to correction before publication in the Official Reports.
PARTIES	Maria Adames v. Galaxy General Contracting Corp.

TOPICS

- summary judgment
- premises liability
- negligence
- preservation of error
- appellate procedure

PRACTICE AREAS

torts

construction law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was premature because discovery had not commenced.
2. Whether Galaxy established its entitlement to summary judgment through an affidavit cross-referencing Department of Transportation work permits and evidence concerning the location and timing of its work.
3. Whether plaintiff raised a triable issue of fact connecting Galaxy's work to the roadway defect that caused her fall.
4. Whether plaintiff preserved her challenge to the vice-president's affidavit for appellate review.

HOLDINGS

1. Summary judgment was not premature because plaintiff failed to demonstrate that additional discovery might disclose facts supporting her opposition.
2. Galaxy met its prima facie burden and its vice-president's affidavit was sufficient to shift the summary-judgment burden to plaintiff.
3. Plaintiff's argument that the affidavit was not based on personal knowledge was unpreserved because she did not raise it below.
4. Plaintiff failed to raise a triable issue of fact because her theory that work performed in one area caused a defect in another area two years later was speculative.

KEY QUOTATIONS

"Her theory that work performed in one area could have caused a defect in the roadway in a different area two years later "amounts to no more than speculation"" (at 1)

FACTUAL BACKGROUND

Plaintiff fell on Third Avenue and alleged that roadway conditions connected to work performed by Galaxy caused the defect. Galaxy's work was performed on a separate segment of Third Avenue adjacent to its property, and the relevant work passed New York City Department of Transportation inspection approximately two years before plaintiff's accident. Plaintiff relied on a vice-president's affidavit, work permits, and a HIQA inspection report in opposing summary judgment.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted Galaxy's motion for summary judgment dismissing the complaint as against it. The Appellate Division, First Department, unanimously affirmed the order to the extent appealed from.

DISPOSITION

affirmed

CASES CITED

- Kremer v. Sinopia LLC, 104 A.D.3d 479, 481 (1st Dep't 2013)
- 27 W. 72nd St. Note Buyer LLC v. Terzi, 194 A.D.3d 630, 631 (1st Dep't 2021), leave denied, 37 N.Y.3d 913 (2021)
- Guerrero v. Milla, 135 A.D.3d 635, 636 (1st Dep't 2016)

OPINION

Adames v. Galaxy Gen. Contr. Corp. 2026 NY Slip Op 03054

PER CURIAM.

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May 14, 2026

Appellate Division, First Department

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

Maria Adames, Plaintiff-Appellant,

v

Galaxy General Contracting Corp., et al., Defendants-Respondents. Consolidated Edison, Inc., et al., Defendants.

Decided and Entered: May 14, 2026

Index No. 802231/23|Appeal No. 6612|Case No. 2025-00235|

Before: Webber, J.P., González, Pitt-Burke, Higgitt, Hagler, JJ.

Kenneth J. Gorman, New York, for appellant.

Chartwell Law, New York (Anna Schuelein of counsel), for Galaxy General Contracting Corp., respondent.

Order, Supreme Court, Bronx County (Mitchell J. Danziger, J.), entered December 24, 2024, which, to the extent appealed from, granted defendant Galaxy General Contracting Corp.'s motion for summary judgment dismissing the complaint as against it, unanimously affirmed, without costs.

To the extent plaintiff argues that summary judgment was premature because discovery had not yet commenced, the position is unavailing because she failed to demonstrate that facts might be ultimately disclosed which would support her opposition to the motion (*see Kremer v Sinopia LLC*, 104 AD3d 479, 481 [1st Dept 2013]).

Galaxy met its prima facie burden as to summary judgment. Plaintiff's argument that the affidavit of Galaxy's Vice President was not based on personal

knowledge was not raised below, depriving Galaxy of an opportunity to cure the defect, and so the issue is unpreserved (*see* 27 W. 72nd St. Note Buyer LLC v Terzi, 194 AD3d 630, 631 [1st Dept 2021], *lv denied* 37 NY3d 913 [2021]). In any event, the affidavit was sufficient to shift the burden on summary judgment to plaintiff, since it cross-referenced New York City Department of Transportation work permits issued to Galaxy in connection with roadwork performed adjacent to Galaxy's property. That work was confined to a separate segment of Third Avenue from where plaintiff fell.

In opposition, plaintiff failed to raise a triable issue of fact. Her theory that work performed in one area could have caused a defect in the roadway in a different area two years later "amounts to no more than speculation" (*Guerrero v Milla*, 135 AD3d 635, 636 [1st Dept 2016]). Moreover, the HIQA inspection report she submitted in opposition to Galaxy's motion only reaffirmed Galaxy's entitlement to summary judgment. The work that Galaxy was directed to perform related to certain road conditions caused by the permitted work, passed DOT inspection roughly two years before plaintiff's accident.

THIS CONSTITUTES THE DECISION AND ORDER

PER CURIAM.

802231/23|Appeal No. 6612|Case No. 2025-00235|</p> <p>Before: Webber, J.P., González, Pitt-Burke, Higgitt, Hagler, JJ. </p> <div> <p>Kenneth J. Gorman, New York, for appellant.</p> <p>Chartwell Law, New York (Anna Schuelein of counsel), for Galaxy General Contracting Corp., respondent.</p> </div> [*1] <p>Order, Supreme Court, Bronx County (Mitchell J. Danziger, J.), entered December 24, 2024, which, to the extent appealed from, granted defendant Galaxy General Contracting Corp.'s motion for summary judgment dismissing the complaint as against it, unanimously affirmed, without costs.</p> <p>To the extent plaintiff argues that summary judgment was premature because discovery had not yet commenced, the position is unavailing because she failed to demonstrate that facts might be ultimately disclosed which would support her opposition to the motion (<i>see Kremer v Sinopia LLC</i>, 104 AD3d 479, 481 [1st Dept 2013]).</p> <p>Galaxy met its prima facie burden as to summary judgment. Plaintiff's argument that the affidavit of Galaxy's Vice President was not based on personal knowledge was not raised below, depriving Galaxy of an opportunity to cure the defect, and so the issue is unpreserved (<i>see 27 W. 72nd St. Note Buyer LLC v Terzi</i>, 194 AD3d 630, 631 [1st Dept 2021], <i>lv denied</i> 37 NY3d 913 [2021]). In any event, the affidavit was sufficient to shift the burden on summary judgment to plaintiff, since it cross-referenced New York City Department of Transportation work permits issued to Galaxy in connection with roadwork performed adjacent to Galaxy's property. That work was confined to a separate segment of Third Avenue from where plaintiff fell.</p> <p>In opposition, plaintiff failed to raise a triable issue of fact. Her theory that work performed in one area could have caused a defect in the roadway in a different area two years later "amounts to no more than speculation" (<i>Guerrero v Milla</i>, 135 AD3d 635, 636 [1st Dept 2016]). Moreover, the HIQA inspection report she submitted in opposition to Galaxy's motion only reaffirmed Galaxy's entitlement to summary judgment. The work that Galaxy was directed to perform related to certain road conditions caused by the permitted work, passed DOT inspection roughly two years before plaintiff's accident.</p> <p>THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p>

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