

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

Medina v. 217 LLC

2026 NY Slip Op 00316 (App. Div. 1st Dep't Jan. 22 2026) · No. Index No. 2024-06462; Appeal No. 5637; Case No. 2024-06462 · Decided January 22, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the denial of the defendant's motion for summary judgment in a premises-liability action involving water leakage and a slip-and-fall on a building stair landing. The court held that the defendant did not establish that it was an out-of-possession landlord, that issues of fact existed regarding actual or constructive notice and alleged statutory violations, and that the remaining arguments were unavailing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Webber, J.; Friedman, J.; González, J.; Michael, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 22, 2026
DOCKET	Index No. 2024-06462; Appeal No. 5637; Case No. 2024-06462
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying its motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	Summary judgment is improper where the record presents triable issues of fact; conflicting evidence and expert opinions must be resolved at trial rather than on summary judgment.
PRECEDENTIAL VALUE	published
PARTIES	217 LLC v. Brenda Medina

TOPICS

- premises liability
- negligence
- summary judgment
- hearsay
- evidence

PRACTICE AREAS

premises liability

negligence

real estate

civil procedure

evidence

QUESTIONS PRESENTED

1. Whether defendant established as a matter of law that it was an out-of-possession landlord without a duty to maintain the premises.
2. Whether triable issues of fact existed regarding defendant's actual or constructive notice of the water leakage and wet condition.
3. Whether hearsay testimony concerning prior complaints could be considered in opposition to summary judgment.
4. Whether defendant was entitled to dismissal of alleged violations of the Multiple Dwelling Law and various city, building, and fire codes.

HOLDINGS

1. Defendant failed to establish that it had relinquished possession or control of the premises and therefore did not establish entitlement to judgment as a matter of law on the ground that it had no duty to maintain the premises.
2. Triable issues of fact existed as to whether defendant had actual or constructive notice of the water leakage that caused plaintiff's fall, precluding summary judgment.
3. The testimony concerning statements by plaintiff's employer and the employer's nephew was properly considered in opposition to defendant's summary judgment motion.
4. Defendant was not entitled to dismissal of the alleged statutory and code violations because the record did not establish that no substantial alterations had been made after 1951, and conflicting expert opinions raised issues of fact.

KEY QUOTATIONS

“Triable issues of fact exist as to whether defendant had actual or constructive notice of the water leakage that caused plaintiff to slip and fall.” ([*1])

“The parties' conflicting expert opinions as to whether defendant violated these statutes raises questions of fact that cannot be resolved on a motion for summary judgment” ([*1])

FACTUAL BACKGROUND

Brenda Medina allegedly slipped and fell on a wet floor after water leaked through a skylight and accumulated at the top of stairs on the fifth-floor landing of a building owned by 217 LLC. Defendant asserted that P.K. Management maintained the premises and offered testimony from a handyman who inspected the premises daily and had not observed or received complaints about skylight leaks. Medina testified that it had rained before and on the morning of the accident, that her employer and the employer's nephew had previously complained about recurring water accumulation, and that she had relayed complaints to the building superintendent.

PROCEDURAL HISTORY

Plaintiff brought a premises-liability action alleging that she slipped and fell on water that had accumulated on a fifth-floor landing in a building owned by defendant. Supreme Court, Bronx County, denied defendant's motion for summary judgment. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- *Matias v. New Yorker Hotel Mgt. Co., Inc.*, 201 A.D.3d 592, 593 (1st Dep't 2022)
- *Villafane v. Industrial Constr. Mgt., Ltd.*, 137 A.D.3d 526, 526 (1st Dep't 2016)
- *Porco v. Marshalls Dept. Stores*, 30 A.D.3d 284, 284-285 (1st Dep't 2006)
- *Matter of New York City Asbestos Litig.*, 190 A.D.3d 589, 590-591 (1st Dep't 2021)
- *Splawn v. Lextaj Corp.*, 197 A.D.2d 479 (1st Dep't 1993), lv. denied, 83 N.Y.2d 753 (1994)
- *Shillingford v. New York City Tr. Auth.*, 147 A.D.3d 465, 465 (1st Dep't 2017)

OPINION

PER CURIAM.

Medina v 217 LLC (2026 NY Slip Op 00316) Medina v 217 LLC 2026 NY Slip Op 00316
Decided on January 22, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 22, 2026 Before: Manzanet-Daniels, J.P., Webber, Friedman, González, Michael, JJ. Index No. 2024-06462|Appeal No. 5637|Case No. 2024-06462| [*1]Brenda Medina, Plaintiff-Respondent, v 217 LLC, Defendant-Appellant.

Segal McCambridge Singer & Mahoney, Ltd., New York (Justin Waytowich of counsel), for appellant. Pollack, Pollack, Isaac & DeCicco, LLP, New York (Joshua Block of counsel), for respondent. Order, Supreme Court, Bronx County (Elizabeth A. Taylor, J.), entered October 11, 2024, which denied defendant's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Plaintiff alleges that she slipped and fell on a wet floor after water that leaked through a skylight accumulated on top of the stairs on the fifth-floor landing at a building owned by defendant. Defendant failed to establish that it is an out-of-possession landlord with no duty to maintain the premises (see *Matias v New Yorker Hotel Mgt. Co., Inc.*, 201 AD3d 592, 593 [1st Dept 2022]).

Although defendant asserted that nonparty P.K. Management maintained the premises on a daily basis, defendant did not submit "any primary or other competent evidence" demonstrating that it

had relinquished possession or control so as to absolve it of its duty to maintain the premises (*id.*; see *Villafane v Industrial Constr. Mgt., Ltd.*, 137 AD3d 526, 526 [1st Dept 2016]).

Triable issues of fact exist as to whether defendant had actual or constructive notice of the water leakage that caused plaintiff to slip and fall. Defendant's witness, a building handyman, testified that he inspected the premises every morning, including the morning of the incident, and that he never saw nor received complaints regarding leaks from the skylight.

However, plaintiff testified that it had rained the previous day, as well as the morning of the incident, that her employer, a resident of defendant's building, told her that water had been collecting on that landing when it rained "for many years," and that plaintiff passed along her employer's complaints to the building's superintendent prior to her accident.

She further testified that, after she fell, she herself saw the water leaking from a light fixture and into the hallway, and her employer's nephew indicated that he too had previously complained about the water leakage. Plaintiff's failure to notice the wet condition of the floor prior to her fall does "not conclusively establish [defendant's] lack of notice" (*Porco v Marshalls Dept. Stores*, 30 AD3d 284, 284—285 [1st Dept 2006]).

Although the statements made by plaintiff's employer and the employer's nephew are hearsay, the record indicates that the declarants were not available, and the testimony was properly considered in opposition to defendant's summary judgment motion along with other nonhearsay evidence (see *Matter of New York City Asbestos Litig.*, 190 AD3d 589, 590-591 [1st Dept 2021]).

Moreover, the statements were offered not for the truth of the matter asserted but to show that defendant received information about the leak and was therefore on notice (see *Splawn v Lextaj Corp.*, 197 AD2d 479 [1st Dept 1993], *lv denied* 83 NY2d 753 [1994]).

Finally, to the extent defendant seeks dismissal of the alleged statutory violations as a matter of law, its arguments are unavailing. The record is devoid of sufficient proof that no substantial alterations were made after 1951, which would bring it within the ambit of the Multiple Dwelling Law and the various city, building, and fire codes asserted.

The parties' conflicting expert opinions as to whether defendant violated these statutes raises questions of fact that cannot be resolved on a motion for summary judgment (see *Shillingford v New York City Tr. Auth.*, 147 AD3d 465, 465 [1st Dept 2017]).

We have considered defendant's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 22, 2026

PER CURIAM.

Medina v 217 LLC (2026 NY Slip Op 00316) Medina v 217 LLC 2026 NY Slip Op 00316 Decided on January 22, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 22, 2026 Before: Manzanet-Daniels, J.P., Webber, Friedman, González, Michael, JJ. Index No. 2024-06462|Appeal No. 5637|Case No. 2024-06462| [*1]Brenda Medina, Plaintiff-Respondent, v 217 LLC, Defendant-Appellant.

Segal McCambridge Singer & Mahoney, Ltd., New York (Justin Waytowich of counsel), for appellant. Pollack, Pollack, Isaac & DeCicco, LLP, New York (Joshua Block of counsel), for respondent. Order, Supreme Court, Bronx County (Elizabeth A. Taylor, J.), entered October 11, 2024, which denied defendant's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Plaintiff alleges that she slipped and fell on a wet floor after water that leaked through a skylight accumulated on top of the stairs on the fifth-floor landing at a building owned by defendant. Defendant failed to establish that it is an out-of-possession landlord with no duty to maintain the premises (see *Matias v New Yorker Hotel Mgt. Co., Inc.*, 201 AD3d 592, 593 [1st Dept 2022]).

Although defendant asserted that nonparty P.K. Management maintained the premises on a daily basis, defendant did not submit "any primary or other competent evidence" demonstrating that it had relinquished possession or control so as to absolve it of its duty to maintain the premises (*id.*; see *Villafane v Industrial Constr. Mgt., Ltd.*, 137 AD3d 526, 526 [1st Dept 2016]).

Triable issues of fact exist as to whether defendant had actual or constructive notice of the water leakage that caused plaintiff to slip and fall. Defendant's witness, a building handyman, testified that he inspected the premises every morning, including the morning of the incident, and that he never saw nor received complaints regarding leaks from the skylight.

However, plaintiff testified that it had rained the previous day, as well as the morning of the incident, that her employer, a resident of defendant's building, told her that water had been collecting on that landing when it rained "for many years," and that plaintiff passed along her employer's complaints to the building's superintendent prior to her accident.

She further testified that, after she fell, she herself saw the water leaking from a light fixture and into the hallway, and her employer's nephew indicated that he too had previously complained about the water leakage. Plaintiff's failure to notice the wet condition of the floor prior to her fall does "not conclusively establish [defendant's] lack of notice" (*Porco v Marshalls Dept. Stores*, 30 AD3d 284, 284—285 [1st Dept 2006]).

Although the statements made by plaintiff's employer and the employer's nephew are hearsay, the record indicates that the declarants were not available, and the testimony was properly considered

in opposition to defendant's summary judgment motion along with other nonhearsay evidence (see Matter of New York City Asbestos Litig., 190 AD3d 589, 590-591 [1st Dept 2021]).

Moreover, the statements were offered not for the truth of the matter asserted but to show that defendant received information about the leak and was therefore on notice (see Splawn v Lextaj Corp., 197 AD2d 479 [1st Dept 1993], lv denied 83 NY2d 753 [1994]).

Finally, to the extent defendant seeks dismissal of the alleged statutory violations as a matter of law, its arguments are unavailing. The record is devoid of sufficient proof that no substantial alterations were made after 1951, which would bring it within the ambit of the Multiple Dwelling Law and the various city, building, and fire codes asserted.

The parties' conflicting expert opinions as to whether defendant violated these statutes raises questions of fact that cannot be resolved on a motion for summary judgment (see Shillingford v New York City Tr. Auth., 147 AD3d 465, 465 [1st Dept 2017]).

We have considered defendant's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 22, 2026