

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

Green v. Whole Foods Mkt. Group, Inc.

Green, 2025 NY Slip Op 07094 (Supreme Court of the State of New York Appellate Division First Department 2025) · No. Index No. 155089/20; Appeal No. 5422; Case No. 2024-06371 · Decided December 18, 2025

SUMMARY

The Appellate Division, First Department reversed an order granting Whole Foods summary judgment in a premises-liability action involving a slip and fall in a customer bathroom. The court held that defendants failed to establish prima facie that they lacked constructive notice of the hazardous condition because their witness could not authenticate the inspection logs and the logs showed no inspection for nearly two hours before closing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Scarpulla, J.; Friedman, J.; Shulman, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	December 18, 2025
DOCKET	Index No. 155089/20; Appeal No. 5422; Case No. 2024-06371
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing her premises-liability complaint.
STANDARD OF REVIEW	The Appellate Division reviewed the grant of summary judgment to determine whether defendants established prima facie entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Shanta Green v. Whole Foods Market Group, Inc., et al.

TOPICS

premises liability

summary judgment

standard of review

appellate procedure

personal injury

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendants established prima facie entitlement to summary judgment by demonstrating that they lacked constructive notice of the dangerous condition.
2. Whether plaintiff's failure to see the clear liquid before falling conclusively established that defendants lacked notice.
3. Whether the appellate court should consider arguments concerning whether defendants created the condition or had actual notice when those arguments were abandoned or raised for the first time on appeal.

HOLDINGS

1. Defendants failed to satisfy their prima facie burden of establishing that they did not have constructive notice of the dangerous condition, so summary judgment was improper.
2. Plaintiff's failure to notice the clear liquid before falling did not conclusively establish that defendants lacked notice.
3. Because defendants failed to establish prima facie entitlement to summary judgment, the court did not need to consider the sufficiency of plaintiff's opposition papers.
4. The court declined to consider the parties' arguments concerning whether defendants created the condition or had actual notice because plaintiff abandoned those arguments or they were raised for the first time on appeal.

KEY QUOTATIONS

"Defendants failed to satisfy their prima facie burden of establishing that they did not have constructive notice of the allegedly dangerous condition that caused plaintiff to slip and fall." ([*1])

"Because defendants failed to establish prima facie entitlement to summary judgment, we need not consider the sufficiency of the opposition papers" ([*1])

FACTUAL BACKGROUND

On March 12, 2018, at approximately 10:30 p.m., Shanta Green slipped and fell on a clear liquid substance in a customer bathroom at a Whole Foods store. After the fall, her pants and hands were wet. She testified and submitted photographs indicating that the bathroom was not clean, including an overflowing trash can and tissue on the floor. Defendants relied on a store supervisor's testimony and inspection logs to show that the bathroom was inspected and cleaned, but the evidence indicated no inspection between 9:12 p.m. and the store's 11 p.m. closing.

PROCEDURAL HISTORY

Supreme Court, New York County, granted defendants' motion for summary judgment dismissing the complaint. The Appellate Division, First Department, unanimously reversed on the law and denied the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting defendants' motion for summary judgment was reversed and the motion was denied. No further specific remand instructions were stated.

CASES CITED

- *Henriquez v. Appula Mgt. Corp.*, 234 AD3d 592, 593 (1st Dept. 2025)
- *White v. MP 40 Realty Mgt., LLC*, 187 AD3d 561, 562 (1st Dept. 2020)
- *Porco v. Marshalls Dept. Stores*, 30 AD3d 284, 284-285 (1st Dept. 2006)
- *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985)
- *Shaw v. Bluepers Family Billiards*, 94 AD3d 858, 860 (2d Dept. 2012)

OPINION

Green v. Whole Foods Mkt. Group, Inc. 2025 NY Slip Op 07094

PER CURIAM.

Green v. Whole Foods Mkt. Group, Inc. (2025 NY Slip Op 07094) *Green v. Whole Foods Mkt. Group, Inc.* 2025 NY Slip Op 07094 Decided on December 18, 2025 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: December 18, 2025 Before: Kern, J.P., Scarpulla, Friedman, Shulman, Rosado, JJ. Index No. 155089/20|Appeal No. 5422|Case No. 2024-06371| [*1]Shanta Green, Plaintiff-Appellant, v Whole Foods Market Group, Inc. et al., Defendants-Respondents. Pollack Isaac & DeCicco, LLP, New York (Jillian Rosen of counsel), for appellant. Fishman McIntyre Levine Samansky, P.C., New York (Mohamed Mazzy of counsel), for respondents. Order, Supreme Court, New York County (Paul A. Goetz, J.), entered on or about September 4, 2024, which granted defendants' motion for summary judgment dismissing the complaint, unanimously reversed, on the law, without costs, and the motion denied. Plaintiff alleges that on March 12, 2018, at around 10:30 p.m., she slipped and fell on a clear liquid substance in a customer bathroom at a Whole Foods store. Plaintiff testified that her pants and hands were wet after she got up from the floor. She also submitted photographs and testified that the bathroom was not clean when she entered it, with an overflowing trash can and tissue on the floor under and in front of the trash can. Defendants failed to satisfy their prima facie burden of establishing that they did not have constructive notice of the allegedly dangerous condition that caused plaintiff to slip and fall. Defendants' sole witness, a store supervisor, testified that she did not remember if she worked on the day of the incident and that she did not recognize and could not authenticate the

inspection logs from that day. The inspection logs showed that the bathroom was not inspected between 9:12 p.m. and the store's closing at 11 p.m., despite the supervisor's testimony that the bathrooms were inspected and cleaned hourly, in addition to frequent check-ins. Accordingly, neither the supervisor's deposition testimony nor the inspection logs sustained defendants' initial burden as to lack of constructive notice (see *Henriquez v Appula Mgt. Corp.* , 234 AD3d 592, 593 [1st Dept 2025]; *White v MP 40 Realty Mgt., LLC*, 187 AD3d 561, 562 [1st Dept 2020]). Additionally, in the absence of admissible evidence that defendants inspected and cleaned the bathroom prior to plaintiff's accident, the fact that plaintiff did not notice the clear liquid substance on the floor before she fell does not conclusively establish that defendants had no notice of the condition (see *Porco v Marshalls Dept. Stores*, 30 AD3d 284, 284-285 [1st Dept 2006]). Because defendants failed to establish prima facie entitlement to summary judgment, we need not consider the sufficiency of the opposition papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). To the extent the parties advance arguments regarding whether defendants either created or had actual notice of the allegedly dangerous condition, those arguments are either deemed abandoned by plaintiff, as they were not raised in her opening brief or are improperly raised for the first time on appeal (see *Shaw v Bluepers Family Billiards* , 94 AD3d 858, 860 [2d Dept 2012]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 18, 2025 PER CURIAM.

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