

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

Guzman v. Howe

2026 NY Slip Op 01038 (N.Y. Ct. App. 2026) · No. 2024-00563; 2024-02308; Index No. 510228/21 · Decided
February 25, 2026

SUMMARY

The Appellate Division, Second Department, reviewed appeals arising from a personal-injury action involving a trip on an uneven sidewalk adjacent to a leased restaurant. The court dismissed certain appeals and portions of appeals as procedurally improper or brought by parties not aggrieved, but reversed the judgment insofar as it dismissed the claims and cross-claims against the restaurant. The court held that ambiguities in the lease raised issues of fact concerning the restaurant's sidewalk-repair obligations and potential contractual indemnification liability.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; William G. Ford, J.; Lourdes M. Ventura, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 25, 2026
DOCKET	2024-00563; 2024-02308; Index No. 510228/21
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff and the property-owner defendants separately appealed from an order granting Steger Restaurant, Inc.'s motion for summary judgment and from the resulting judgment dismissing the amended complaint and all cross-claims against Steger.
STANDARD OF REVIEW	The Appellate Division reviewed the grant of summary judgment de novo, determining whether Steger established prima facie entitlement to judgment as a matter of law and whether triable issues of fact remained.
PRECEDENTIAL VALUE	Published opinion

PARTIES

Joseph Guzman, Robert L. Howe, Diana T. Howe v. Steger Restaurant, Inc.

TOPICS

appellate procedure

summary judgment

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appeals from the interlocutory order granting summary judgment had to be dismissed after entry of judgment.
2. Whether the plaintiff and the Howe defendants were aggrieved by portions of the judgment dismissing claims asserted by other parties.
3. Whether Steger established prima facie entitlement to summary judgment by demonstrating that the lease did not entirely displace the landowners' nondelegable duty to maintain and repair the abutting sidewalk.
4. Whether Steger established entitlement to summary judgment dismissing the Howe defendants' contractual and common-law indemnification cross-claims.

HOLDINGS

1. The appeals from the order granting Steger's summary-judgment motion had to be dismissed because the right of direct appeal from the order terminated upon entry of the judgment.
2. Steger was not entitled to summary judgment dismissing the amended complaint because it failed to establish prima facie that it had no obligation to repair or replace the sidewalk, and the lease provisions created a triable issue as to whether the lease entirely displaced the landowners' duty.
3. Steger was not entitled to summary judgment dismissing the Howe defendants' contractual and common-law indemnification cross-claims.

KEY QUOTATIONS

*“The Administrative Code of the City of New York § 7-210 imposes a nondelegable duty on a property owner to maintain and repair the sidewalk abutting its property” (*2)*

*“Here, Steger failed to establish, prima facie, that it did not have an obligation to repair or replace the sidewalk abutting the premises.” (*2)*

*“The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances” (*3)*

FACTUAL BACKGROUND

Guzman allegedly sustained personal injuries after tripping on an unlevel portion of a sidewalk adjacent to a Brooklyn restaurant. Robert L. Howe and Diana T. Howe owned the premises, and Steger Restaurant, Inc. leased them. The lease contained provisions concerning nonstructural and structural sidewalk repairs, sidewalk and curb replacements, and repairs deemed by New York City to be the responsibility of property holders. The Howe defendants asserted contractual and common-law indemnification cross-claims against Steger.

PROCEDURAL HISTORY

Joseph Guzman sued to recover damages for personal injuries allegedly sustained when he tripped on an unlevel sidewalk adjacent to a restaurant. The Supreme Court, Kings County, granted Steger's motion for summary judgment dismissing the amended complaint and the Howe defendants' indemnification cross-claims, then entered judgment in Steger's favor. The Appellate Division dismissed the appeals from the order, dismissed portions of the appeals by parties who were not aggrieved, and reversed the judgment insofar as reviewed, reinstating the claims against Steger and denying its summary-judgment motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The amended complaint and all cross-claims insofar as asserted against Steger Restaurant, Inc. were reinstated, Steger's motion for summary judgment was denied, and the order was modified accordingly.

CASES CITED

- Errazuri v E Food Supermarket, Inc., 228 AD3d 732, 734
- Paperman v 2281 86th St. Corp., 142 AD3d 540, 541
- Hsu v City of New York, 145 AD3d 759, 760
- Alayev v Juster Assoc., LLC, 122 AD3d 886, 887
- Sheinman-Hardes v Main 15 Lee Ltd. Partnership, 235 AD3d 683, 684-685
- Campisi v Gambar Food Corp., 130 AD3d 854, 855-856
- Karanikolas v Elias Taverna, LLC, 120 AD3d 552, 556
- Mixon v TVB Inc., 76 AD3d 144
- Matter of Aho, 39 NY2d 241