

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

Sharbani v. Alter

Sharbani, 2026 NY Slip Op 02430 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-08885 · Decided April 22, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order granting the Town of North Hempstead summary judgment in a personal-injury action arising from a trip-and-fall on an uneven sidewalk. The court held that the Town established the absence of prior written notice and that the plaintiffs failed to raise a triable issue regarding the affirmative negligence or special use exceptions.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Paul Wooten, J.; Janice A. Taylor, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 22, 2026
DOCKET	2023-08885
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting the Town of North Hempstead summary judgment dismissing the complaint insofar as asserted against it.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Town was entitled to summary judgment dismissing the claims against it as a matter of law and whether plaintiffs raised a triable issue of fact regarding an exception to the prior written notice requirement.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Yelena Sharbani, Yelena Sharbani's husband, suing derivatively v. Town of North Hempstead

TOPICS

premises liability

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summary judgment

personal injury

standard of review

PRACTICE AREAS

premises liability

municipal liability

personal injury

civil procedure

QUESTIONS PRESENTED

1. Whether the Town established its prima facie entitlement to summary judgment by demonstrating that it lacked prior written notice of the alleged sidewalk defect.
2. Whether plaintiffs raised a triable issue of fact showing that an exception to the prior written notice requirement applied, including affirmative municipal negligence or special use.
3. Whether the Town was required, as part of its prima facie showing, to establish that it did not affirmatively create the alleged defect through negligence.

HOLDINGS

1. A municipality subject to a prior written notice statute cannot be held liable for a defect within the statute's scope unless it received prior written notice of the defect or a recognized exception applies.
2. The Town established prima facie entitlement to summary judgment by submitting municipal affidavits showing that a records search revealed no prior written notice of the alleged defect.
3. The Town was not required, in order to establish prima facie entitlement to summary judgment, to demonstrate that it did not create the alleged defect through an affirmative act of negligence.
4. Plaintiffs failed to raise a triable issue of fact concerning the affirmative-negligence exception and did not argue that the special-use exception applied; summary judgment for the Town was therefore proper.

KEY QUOTATIONS

*“Where, as here, a municipality has enacted a prior written notice statute, it may not be subjected to liability for a defect within the scope of the law unless it has received prior written notice of the defect or an exception to the prior written notice requirement applies” ([*1])*

*“To be entitled to summary judgment, the municipality must first establish that it lacked prior written notice of the alleged defect. Once that showing is made, the burden shifts to the plaintiff to demonstrate the applicability of one of two recognized exceptions to the rule—that the municipality affirmatively created the defect through an act of negligence or that a special use resulted in a special benefit to the locality” ([*1])*

*“The affirmative negligence exception is limited to work done by a municipality ‘that immediately results in the existence of a dangerous condition’” ([*1])*

FACTUAL BACKGROUND

On November 28, 2020, Yelena Sharbani allegedly tripped and fell on an uneven sidewalk in the Town of North Hempstead and sustained personal injuries. The Town submitted affidavits from municipal officials stating that a records search found no prior written notice of a defective condition at the location before the accident. Plaintiffs

did not argue that the special-use exception applied and failed to produce evidence raising a triable issue concerning affirmative municipal negligence.

PROCEDURAL HISTORY

Yelena Sharbani and her husband commenced a personal-injury action in July 2021 after Sharbani allegedly tripped on an uneven sidewalk in the Town of North Hempstead. The Town moved for summary judgment based in part on the absence of prior written notice of the alleged defect. The Supreme Court, Nassau County, granted the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Sales v. City of New York, 241 A.D.3d 1378, 1378
- Canaday v. Village of Wappingers Falls, 220 A.D.3d 731, 732
- Yarborough v. City of New York, 10 N.Y.3d 726, 728
- Wilson v. Incorporated Vil. of Freeport, 212 A.D.3d 870, 871
- Oboler v. City of New York, 8 N.Y.3d 888, 889
- Discepolo v. County of Nassau, 226 A.D.3d 646, 647
- Grady v. Town of Hempstead, 223 A.D.3d 885, 886
- Goodman v. City of New York, 230 A.D.3d 1115, 1117
- Smith v. City of New York, 210 A.D.3d 53, 55-56, 69

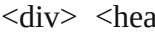
OPINION

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PER CURIAM.

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April 22, 2026

Appellate Division, Second Department

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

Yelena Sharbani, et al., appellants,

v

Francis Alter, et al., defendants, Town of North Hempstead,

respondent.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 22, 2026

2023-08885, (Index No. 609021/21)

Betsy Barros, J.P.

Paul Wooten

Janice A. Taylor

James P. McCormack, JJ.

Levitsky Law Firm PLLC, Brooklyn, NY (Joanna Zieba and Dmitry Levitsky of counsel), for appellants.

Richard J. Nicoletto, Town Attorney, Manhasset, NY (Robert Bogle of counsel), for respondent.

*1

DECISION & ORDER

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Nassau County (Randy Sue Marber, J.), entered July 10, 2023. The order granted the motion of the defendant Town of North Hempstead for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

On November 28, 2020, Yelena Sharbani (hereinafter the injured plaintiff) allegedly was injured when she tripped and fell on an uneven sidewalk in the Town of North Hempstead. In July 2021, the injured plaintiff, and her husband suing derivatively, commenced this action against, among others, the Town. Thereafter, the Town moved for summary judgment dismissing the complaint insofar as asserted against it, arguing, inter alia, that it lacked prior written notice of the alleged defective condition. In an order entered July 10, 2023, the Supreme Court granted the Town's motion. The plaintiffs appeal.

"Where, as here, a municipality has enacted a prior written notice statute, it may not be subjected to liability for a defect within the scope of the law unless it has received prior written notice of the defect or an exception to the prior written notice requirement applies" (*Sales v City of New York*, 241 AD3d 1378, 1378). "To be entitled to summary judgment, the municipality must first establish that it lacked prior written notice of the alleged defect. Once that showing is made, the burden shifts to the plaintiff to demonstrate the applicability of one of two recognized exceptions to the rule—that the municipality affirmatively created the defect through an act of negligence or that a special use resulted in a special benefit to the locality" (*Canaday v Village of Wappingers Falls*, 220 AD3d 731, 732 [citation and internal quotation marks omitted]; *see Yarborough v City of New York*, 10 NY3d 726, 728). "The affirmative negligence exception is limited to work done by a municipality 'that immediately results in the existence of a dangerous condition'" (*Wilson v Incorporated Vil. of Freeport*, 212 AD3d 870, 871 [emphasis omitted], quoting *Oboler v City of New York*, 8 NY3d 888, 889). "Even if a municipality performs a negligent repair, where the defect develops over time with environmental wear and tear, the affirmative negligence exception is inapplicable" (*id.* [internal quotation marks omitted]; *see Yarborough v City of New York*, 10 NY3d at 728).

Here, the Town established, prima facie, that it did not receive prior written notice of the alleged defect by submitting, among other things, affidavits from the Town Superintendent of Highways, the Acting Commissioner of the Town's Department of Public Works, and the Town Clerk, each of whom averred that a records search failed to reveal any written notice of a defective condition at the subject location prior to the date of the accident (*see* *Discepolo v*

County of Nassau

, 226 AD3d 646, 647; *Grady v Town of Hempstead*, 223 AD3d 885, 886). To the extent the plaintiffs contend that the Town, in order to establish its prima facie entitlement to judgment as a matter of law, was required to demonstrate that it did not create the alleged defect through an affirmative act of negligence, the plaintiffs have misstated the applicable law (*see* *Goodman v City of New York*, 230 AD3d 1115, 1117; *Smith v City of New York*, 210 AD3d 53, 55-56, 69).

Thus, the burden shifted to the plaintiffs to raise a triable issue of fact as to the applicability of the affirmative negligence or special use exceptions to the prior written notice rule (*see* *Yarborough v City of New York*, 10 NY3d at 728). The plaintiffs did not argue that the special use exception was applicable and failed to raise a triable issue of fact as to the affirmative negligence exception (*see* *Grady v Town of Hempstead*, 223 AD3d at 886).

The plaintiffs' remaining contentions are without merit.

Accordingly, the Supreme Court properly granted the Town's motion for summary judgment dismissing the complaint insofar as asserted against it.

BARROS, J.P., WOOTEN, TAYLOR and MCCORMACK, JJ., concur.

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