

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

Molina v. Appula Mgt. Corp.

Molina, 2026 NY Slip Op 01603 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Appeal Nos. 6133-6134; Case Nos. 2024-07722, 2025-02276 · Decided March 19, 2026

SUMMARY

The Appellate Division, First Department reversed orders denying defendants' motions for summary judgment in consolidated actions arising from a tenant's intentional gasoline fire in a residential building. The court held that defendants lacked the authority, ability, and opportunity to control the tenant's conduct and therefore had no duty to prevent the fire, while declining to address separate issues concerning premises maintenance and dismissing one appeal as academic.

CASE DETAILS

|                       |                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                      |
| WRITING FOR THE COURT | Scarpulla, J.P.; Kapnick, J.; Pitt-Burke, J.; Michael, J.; Hagler, J.                                                                                                                                                             |
| JURISDICTION          | New York Supreme Court, Appellate Division, First Department                                                                                                                                                                      |
| DECIDED               | March 19, 2026                                                                                                                                                                                                                    |
| DOCKET                | Appeal Nos. 6133-6134; Case Nos. 2024-07722, 2025-02276                                                                                                                                                                           |
| DISPOSITION           | reversed                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Defendants appealed orders denying their motions for summary judgment in four personal-injury actions arising from a tenant's deliberate gasoline fire in a residential building.                                                 |
| STANDARD OF REVIEW    | Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the appellate court reviewed the issue as a matter of law. |
| PRECEDENTIAL VALUE    | Published and precedential New York appellate decision                                                                                                                                                                            |
| PARTIES               | Appula Management Corp. et al., Picdale Realty LLC et al. v. Damarys Molina, Carlos Matias, Joshua Pizarro, Odell Genyard, Jr. et al.                                                                                             |

TOPICS

premises liability

duty of care

negligence

standard of review

appellate procedure

## PRACTICE AREAS

premises liability

negligence

personal injury

appellate procedure

## QUESTIONS PRESENTED

1. Whether building owners and managers owed plaintiffs a duty to prevent a lawful tenant from deliberately setting a fire when defendants allegedly knew of the tenant's threats and possession of gasoline.
2. Whether defendants had the authority, ability, and opportunity under the lease or New York law to control or evict the tenant before the fire.
3. Whether the appeal concerning the discontinued action was academic.

## HOLDINGS

1. When the alleged assailant is a tenant lawfully permitted to be in the building, the applicable duty inquiry is whether the defendants had the authority, ability, and opportunity to control the tenant's actions; the negligent-security minimal-precaution standard for third-party nontenant assailants does not apply.
2. Defendants were entitled to summary judgment because plaintiffs failed to establish that defendants had the legal authority or ability to prevent the tenant from starting the fire.
3. The court did not reach that issue because defendants did not challenge the motion courts' findings that factual issues existed concerning the premises' maintenance.
4. The appeal was dismissed as academic because the parties had filed a stipulation of discontinuance.

## KEY QUOTATIONS

*“The appropriate test is, therefore, whether defendants lacked the “authority, ability, and opportunity to control” the tenant's actions such that they had a duty to prevent him from starting the fire” (at \*1)*

*“Accordingly, defendants established their entitlement to summary judgment on the basis of their inability to prevent the tenant from starting the fire that caused plaintiffs' injuries.” (at \*1)*

## FACTUAL BACKGROUND

A tenant in a five-story residential building used gasoline to set fire to the building, allegedly injuring plaintiffs who were tenants. Before the fire, one plaintiff reported to defendants that the tenant had threatened to kill everyone in the building and had been seen carrying gasoline tanks into the building. The plaintiffs sued the building owners and managers, asserting that defendants should have investigated, monitored, or controlled the tenant and taken measures to prevent the fire.

## PROCEDURAL HISTORY

The Supreme Court, Bronx County, denied defendants' motions for summary judgment, finding issues of fact concerning whether defendants owed a duty to protect plaintiffs from a tenant who allegedly threatened occupants and brought gasoline into the building. The Appellate Division reversed the orders to the extent appealed from, granted summary judgment to defendants in the Molina and Matias actions, granted the same relief in the Pizarro action, and dismissed as academic the appeal concerning the Genyard action because the parties had filed a stipulation of discontinuance.

## DISPOSITION

reversed

## CASES CITED

- Burgos v. Aqueduct Realty Corp., 92 N.Y.2d 544 (1998)
- Britt v. New York City Hous. Auth., 3 A.D.3d 514, 514 (2d Dep't 2004), leave to appeal denied, 2 N.Y.3d 705 (2004)
- Cortez v. Delmar Realty Co., Inc., 57 A.D.3d 313, 313 (1st Dep't 2008), leave to appeal dismissed in part, denied in part, 12 N.Y.3d 774 (2009)
- Firpi v. New York City Hous. Auth., 175 A.D.2d 858, 859 (2d Dep't 1991), leave to appeal denied, 78 N.Y.2d 864 (1991)
- Gill v. New York City Hous. Auth., 130 A.D.2d 256, 263 (1st Dep't 1987)
- Kazantzis v. Cascade Funding RM1 Acquisitions Grantor Trust, 217 A.D.3d 410, 411 (1st Dep't 2023)
- Papa v. Papa, 7 A.D.3d 594, 595 (2d Dep't 2004)

## OPINION

Molina v. Appula Mgt. Corp. 2026 NY Slip Op 01603

PER CURIAM.

Molina v Appula Mgt. Corp. ( 2026 NY Slip Op 01603 ) Molina v Appula Mgt. Corp. 2026 NY Slip Op 01603 Decided on March 19, 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: March 19, 2026 Before: Scarpulla, J.P., Kapnick, Pitt-Burke, Michael, Hagler, JJ. Index No. 28863/20, 34052/20, 802338/21, 806175/21|Appeal No. 6133-6134|Case No. 2024-07722, 2025-02276| [\*1]Damarys Molina, Plaintiff-Respondent, v Appula Management Corp. et al., Defendants-Appellants. Carlos Matias, Plaintiff-Respondent, v Picdale Realty LLC et al., Defendants-Appellants. Joshua Pizarro, Plaintiff-Respondent, v Appula Management Corp. et al., Defendants-Appellants. Odell Genyard, Jr., et al., Plaintiffs-Respondents, v Picdale Realty, LLC, et al., Defendants-Appellants. Wade Clark Mulcahy LLP, New York (Robert J. Cosgrove of counsel), for appellants. Sacks and Sacks, LLP, New York (Scott N. Singer of counsel), for Damarys Molina and Joshua Pizarro, respondents. Pollack, Pollack, Isaac & DeCicco, LLP,

New York (Brian J. Isaac of counsel), for Carlos Matias, respondent. Order, Supreme Court, Bronx County (Elizabeth A. Taylor, J.), entered on or about November 29, 2024, which, to the extent appealed from as limited by the briefs, denied defendants' motion for summary judgment dismissing the complaint in the action commenced under index No. 28863/20E on the basis that issues of fact existed as to whether defendants owed a duty to plaintiffs to prevent another tenant from deliberately setting a fire, unanimously reversed, on the law, without costs, and the motion granted to that limited extent. Order, same court (Naita A. Semaj, J.), entered on or about March 19, 2025, which, to the extent appealed from as limited by the briefs, denied defendants' motions for summary judgment dismissing the complaints in the actions commenced under Index Nos. 34052/20E, 802338/21E, and 806175/20E, based on the identification of the same issue of fact as found in the November 29, 2024 order, unanimously reversed, on the law, without costs, and the motions granted to the same extent with respect to the complaints in the actions commenced under index Nos. 34052/20E, and 802338/21E, and the appeal is otherwise dismissed as academic. This appeal concerns a horrible tragedy in which a tenant in a five-story residential property used gasoline to set fire to the building. Plaintiffs are tenants who allegedly sustained injuries during the fire and sued defendants, the owners and managers of the apartment building, in four separate actions. One of the plaintiffs testified that he made several complaints to defendants concerning the tenant's behavior before the incident. Specifically, he reported to defendants that the tenant threatened "to kill everyone" in the building and was seen carrying gasoline tanks into the building. The motion court found that this testimony "raise[d] issues of fact as to whether defendants failed to take minimal measures to investigate the presence of gasoline in the apartment, and to protect the occupants from the risk of fire arising out of the presence of gasoline." The motion court erred in applying the "minimal precaution" standard set forth in negligent security cases because the assailant here was not a third-party nontenant ( see e.g. *Burgos v Aqueduct Realty Corp.* , 92 NY2d 544 [1998]). Rather, he was a tenant in the building who was lawfully permitted to be there at the time of the fire. The appropriate test is, therefore, whether defendants lacked the "authority, ability, and opportunity to control" the tenant's actions such that they had a duty to prevent him from starting the fire ( *Britt v New York City Hous. Auth.* , 3 AD3d 514, 514 [2d Dept 2004], lv denied 2 NY3d 705 [2004]; see *Cortez v Delmar Realty Co., Inc.* , 57 AD3d 313, 313 [1st Dept 2008], lv dismissed in part, denied in part 12 NY3d 774 [2009]. Applying that standard to the facts here, defendants had no authority or ability to evict the tenant under the lease or New York law prior to the fire ( see *Britt* , 3 AD3d at 514 ; *Firpi v New York City Hous. Auth.* , 175 AD2d 858, 859 [2d Dept 1991], lv denied 78 NY2d 864 [1991]). Moreover, plaintiffs failed to establish a clear basis under New York law for defendants to investigate, monitor, or control the tenant which could have prevented him from setting the fire ( see *Gill v New York City Hous. Auth.* , 130 AD2d 256, 263 [1st Dept 1987]). Accordingly, defendants established their entitlement to summary judgment on the basis of their inability to prevent the tenant from starting the fire that caused plaintiffs' injuries. On appeal, defendants did not challenge

the motion courts' findings that issues of fact exist as to whether defendants maintained the premises in such a way as to minimize injuries likely to be caused by a fire in the building. Accordingly, the Court need not address this issue. Finally, we take judicial notice of a stipulation of discontinuance filed by the parties in the action commenced under Index No. 806175/20E ( see *Kazantzis v Cascade Funding RM1 Acquisitions Grantor Trust* , 217 AD3d 410, 411 [1st Dept 2023]). Accordingly, defendants' appeal from the order denying its motion for summary judgment in that action is academic ( see e.g. , *Papa v Papa* , 7 AD3d 594, 595 [2d Dept 2004]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 19, 2026