

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

Bolek-Gawin v. White Plains Kensington, LLC

Bolek-Gawin, 2025 NY Slip Op 06643 (Appellate Division of the Supreme Court of the State of New York First Department 2025) · No. Index No. 24005/20; Appeal No. 5252; Case No. 2025-00130 · Decided December 2, 2025

SUMMARY

The Appellate Division, First Department reversed an order granting defendants summary judgment in a personal-injury action arising from a patio umbrella striking the plaintiff. The court held that conflicting evidence regarding defendants' practice of removing umbrellas on windy days created a triable issue of fact as to whether the accident was foreseeable and whether defendants' conduct constituted actionable negligence.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Manzanet, J.P.; Moulton, J.; Gesmer, J.; Rosado, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 2, 2025
DOCKET	Index No. 24005/20; Appeal No. 5252; Case No. 2025-00130
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing the complaint in a premises-liability negligence action.
STANDARD OF REVIEW	The court reviewed the grant of summary judgment to determine whether defendants established entitlement to judgment as a matter of law and whether plaintiff raised a triable issue of fact.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Malgorzata Bolek-Gawin v. White Plains Kensington, LLC, et al.

TOPICS

- premises liability
- negligence
- summary judgment
- standard of review
- appellate procedure

PRACTICE AREAS

torts

premises liability

summary judgment

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment on the ground that plaintiff's accident was not foreseeable.
2. Whether plaintiff raised a triable issue of fact as to whether defendants' failure to secure the patio umbrella constituted actionable negligence.

HOLDINGS

1. Defendants were not entitled to summary judgment because plaintiff raised a triable issue of fact concerning whether the accident was foreseeable.
2. Plaintiff raised a triable issue of fact as to whether defendants' failure to secure the patio umbrella constituted actionable negligence.

KEY QUOTATIONS

"Insofar as they are not responsible for "unpredictable vagaries of the weather" (Kelly v Berberich, 36 AD3d 475, 477 [1st Dept 2007]), defendants established prima facie that plaintiff's accident was not foreseeable" ([*1])

"Thus, triable issues of fact remain as to whether defendants' failure to secure the umbrella constituted actionable negligence." ([*1])

FACTUAL BACKGROUND

Plaintiff was seated at a table on an outdoor, elevated terrace at defendants' property when an open patio umbrella placed inside the table was lifted by wind and struck her on the head. Plaintiff testified that the weather was pleasant with occasional gusts of wind and that she heard a sound before the umbrella was lifted. Defendants' executive director testified that no similar accident had occurred, while defendants' former porter testified that defendants removed patio umbrellas on windy days because wind could blow them up and cause an accident.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted defendants' motion for summary judgment and dismissed the complaint. The First Department unanimously reversed on the law and denied the motion, concluding that triable issues of fact remained concerning whether the accident was foreseeable and whether defendants' failure to secure the patio umbrella constituted actionable negligence.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting defendants' motion for summary judgment was reversed and the motion was denied. The action therefore proceeds in the lower court.

CASES CITED

- Kelly v. Berberich, 36 A.D.3d 475, 477 (1st Dep't 2007)
- Barr v. Incorporated Vil. of Atl. Beach, 278 A.D.2d 188, 188 (2d Dep't 2000)
- Conlon v. Becksmad Assoc., 5 A.D.3d 286, 286-287 (1st Dep't 2004)

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