

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

Deloach v. McNeil

2026 NY Slip Op 03776 (N.Y. Ct. App. 2026) · No. 2024-07672 · Decided June 17, 2026

SUMMARY

The New York Appellate Division, Second Department, reversed an order granting Consolidated Edison defendants summary judgment in a personal-injury action arising from a vehicle collision. The court held that the defendants failed to make a prima facie showing that their utility truck was engaged in a hazardous operation within the meaning of Vehicle and Traffic Law § 1103(b).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Valerie Brathwaite Nelson, J.; Carl J. Landicino, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	June 17, 2026
DOCKET	2024-07672
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the Consolidated Edison defendants summary judgment dismissing the personal-injury complaint as against them.
STANDARD OF REVIEW	Summary judgment requires the movant to make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact. Failure to make that showing requires denial of the motion regardless of the sufficiency of the opposing papers.
PRECEDENTIAL VALUE	published
PARTIES	Dwayne G. Deloach v. Jason C. McNeil, Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc., et al.

TOPICS

summary judgment

negligence

personal injury

statutory interpretation

standard of review

PRACTICE AREAS

torts

motor vehicle accidents

summary judgment

appellate procedure

QUESTIONS PRESENTED

1. Whether the Consolidated Edison defendants established on summary judgment that their truck was a hazard vehicle actually engaged in a hazardous operation within the meaning of Vehicle and Traffic Law § 1103(b).
2. Whether the Consolidated Edison defendants were entitled to summary judgment dismissing the negligence claims based on the statutory exemption for hazard vehicles engaged in hazardous operations.

HOLDINGS

1. The Consolidated Edison defendants failed to make a prima facie showing that their truck was actually engaged in an operation that would restrict, impede, or interfere with the normal flow of traffic, as required for a hazardous operation under Vehicle and Traffic Law § 117-b.
2. Summary judgment must be denied when the moving party fails to establish a prima facie entitlement to judgment as a matter of law, regardless of the sufficiency of the opposing papers.

KEY QUOTATIONS

*"On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*2)*

*"Here, the Con Ed defendants failed to make a prima facie showing that their truck was "actually engaged in an operation which would restrict, impede or interfere with the normal flow of traffic" at the time of the accident." (*2)*

FACTUAL BACKGROUND

In February 2016, Deloach's vehicle collided with a vehicle operated by Jason C. McNeil at the intersection of Waverly Avenue and Willoughby Avenue in Brooklyn. McNeil was traveling on Waverly Avenue, which was controlled by a stop sign, and asserted that a Consolidated Edison truck parked on Willoughby Avenue blocked his view. Consolidated Edison employees testified that they parked the truck near a sidewalk manhole while performing work and set up cones and flashing lights. Deloach alleged that the truck's placement contributed to the accident.

PROCEDURAL HISTORY

Dwayne G. Deloach commenced a personal-injury action arising from a vehicle collision. The Supreme Court, Kings County, determined that Vehicle and Traffic Law § 1103(b) applied and granted the Consolidated Edison

defendants' motion for summary judgment. The Appellate Division reversed insofar as appealed from and denied that branch of the motion.

DISPOSITION

reversed

CASES CITED

- Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324
- Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853
- Somersall v. New York Tel. Co., 52 N.Y.2d 157, 165-166 & 166 n. 4

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