

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

Merola v. Narrows Med. Bldg. Assoc., LLC

Merola, 2026 NY Slip Op 03438 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2025-03076 · Decided June 3, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying Narrows Medical Building Associates, LLC's motion to dismiss a personal injury complaint arising from a trip-and-fall on a sidewalk. The court held that the lower court improperly converted the CPLR 3211 motion into a summary judgment motion without adequate notice, and further concluded that the submitted evidence did not conclusively establish that the defect was exclusively within the curb or that the defendant had no duty to maintain the accident area.

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.; Lara J. Genovesi, J.; Donna-Marie E. Golia, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	June 3, 2026
DOCKET	2025-03076
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Narrows Medical Building Associates, LLC, appealed from an order denying its CPLR 3211(a) motion to dismiss the personal-injury complaint insofar as asserted against it.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, dismissal based on documentary evidence is proper only when the evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense as a matter of law. On a CPLR 3211(a)(7) motion, the pleading is liberally construed, the alleged facts are accepted as true, and the plaintiff receives the benefit of every favorable inference; the court determines whether the alleged facts fit within any cognizable legal theory.

PRECEDENTIAL VALUE	Published
PARTIES	Narrows Medical Building Associates, LLC v. Gary Merola

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QUESTIONS PRESENTED

1. Whether the Supreme Court properly considered the defendant's CPLR 3211(a) motion under summary-judgment standards.
2. Whether the defendant's documentary and evidentiary submissions conclusively established that the plaintiff's alleged defect was exclusively within a curb and that the defendant had no duty to maintain the accident area.
3. What standards govern the defendant's CPLR 3211(a)(1) and CPLR 3211(a)(7) motion to dismiss.

HOLDINGS

1. A court may treat a CPLR 3211(a) motion as one for summary judgment only after providing adequate notice under CPLR 3211(c); absent adequate notice, the court may not effectively convert the motion into a CPLR 3212 motion.
2. Dismissal based on documentary evidence is warranted only when the documentary evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense as a matter of law.
3. On a CPLR 3211(a)(7) motion, the court must liberally construe the pleading, accept the alleged facts as true, afford the plaintiff every favorable inference, and determine whether the facts fit within any cognizable legal theory.
4. The defendant was not entitled to dismissal because its evidence failed to conclusively establish that the defect causing the plaintiff's fall was exclusively within the curb and that the defendant had no duty to maintain the accident area.

KEY QUOTATIONS

*“Here, the Supreme Court failed to provide adequate notice pursuant to CPLR 3211(c) and erroneously, in effect, converted the defendant's motion pursuant to CPLR 3211(a) into one for summary judgment pursuant to CPLR 3212” (*1)*

*“the evidence submitted by the defendant failed to conclusively establish as a matter of law that the alleged defect that caused the plaintiff to trip was located exclusively within the curb and that the defendant had no duty to maintain the area where the accident occurred” (*2)*

FACTUAL BACKGROUND

The plaintiff allegedly sustained personal injuries when he tripped and fell on a sidewalk abutting property owned or operated by Narrows Medical Building Associates, LLC. The defendant contended that the accident was caused by a defect located in a curb and that, under section 7-210 of the Administrative Code of the City of New York, it had no duty to maintain the curb. The evidence submitted by the defendant did not conclusively establish that the defect was exclusively within the curb or that the defendant lacked a duty to maintain the accident area.

PROCEDURAL HISTORY

Merola sued Narrows Medical Building Associates, LLC, and others for injuries allegedly sustained when he tripped and fell on a sidewalk abutting the defendant's property. The Supreme Court, Kings County, denied the defendant's motion to dismiss. The Appellate Division affirmed, concluding that the lower court had improperly converted the motion to one for summary judgment without adequate notice but that the motion failed under the CPLR 3211(a) standards.

DISPOSITION

affirmed

CASES CITED

- Russo v. Crisona, 219 AD3d 920, 921
- Mihlovan v. Grozavu, 72 NY2d 506, 508
- TV Tech Mgrs., Inc. v. Cohen, 227 AD3d 838, 839
- Velez v. Captain Luna's Mar., 74 AD3d 1191
- Khan v. Vasilenko, 227 AD3d 688, 688-689
- Buchanan v. Law Offs. of Sheldon E. Green, P.C., 215 AD3d 790, 791
- Mawere v. Landu, 130 AD3d 986, 987
- Goshen v. Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326
- Leon v. Martinez, 84 NY2d 83, 87-88
- Koffler v. Cincinnati Ins. Co., 239 AD3d 840, 841
- Guggenheimer v. Ginzburg, 43 NY2d 268, 274-275
- Buonviaggio v. Parkside Assoc., L.P., 120 AD3d 460, 461-462
- Sangaray v. West Riv. Assoc., LLC, 26 NY3d 793
- Vigil v. City of New York, 110 AD3d 986, 987