

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

Brener v. Queens Blvd. Extended Care Facility Corp.

Brener, 2026 NY Slip Op 02240 (Appellate Division of the Supreme Court of the State of New York Second Department 2026) · No. 2024-06401 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order denying defendants' motion for summary judgment in a personal-injury action arising from the plaintiff's slip and fall in a skilled nursing facility. The court held that defendants established there was no negligent application of floor wax and that the plaintiff failed to raise a triable issue of fact. The complaint was therefore dismissed.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Hector D. Lasalle, P.J.; Francesca E. Connolly, J.; Lourdes M. Ventura, J.; Elena Goldberg Velazquez, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2024-06401
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment dismissing a personal-injury complaint.
STANDARD OF REVIEW	De novo review of the denial of summary judgment; the moving defendants were required to establish prima facie entitlement to judgment as a matter of law, after which the plaintiff was required to raise a triable issue of fact.
PRECEDENTIAL VALUE	published
PARTIES	Queens Boulevard Extended Care Facility Corp., et al. v. Lea Brener

TOPICS

- premises liability
- negligence
- summary judgment
- personal injury
- standard of review

PRACTICE AREAS

premises liability

negligence

personal injury

civil procedure

QUESTIONS PRESENTED

1. Whether defendants established entitlement to summary judgment by demonstrating that there was no negligent application of wax and no dangerous condition on the floor.
2. Whether the plaintiff's opposing affidavit raised a triable issue of fact or merely created feigned issues inconsistent with her prior deposition testimony.
3. Whether questions concerning notice were relevant when the plaintiff failed to establish the existence of a dangerous condition.

HOLDINGS

1. Defendants established prima facie entitlement to judgment as a matter of law by demonstrating that there was no negligent application of wax to the floor, and the plaintiff failed to raise a triable issue of fact.
2. The plaintiff's affidavit was insufficient to defeat summary judgment because it merely raised feigned issues of fact designed to avoid the consequences of her earlier deposition testimony.

KEY QUOTATIONS

*"A defendant may not be held liable for the application of wax, polish, or paint to a floor . . . unless the defendant had actual, constructive, or imputed knowledge that the product could render the floor dangerously slippery" (*1)*

*"In the absence of evidence of a negligent application of floor wax or polish, the mere fact that a smooth floor may be shiny or slippery does not support a cause of action to recover damages for negligence, nor does it give rise to an inference of negligence" (*1)*

FACTUAL BACKGROUND

The plaintiff allegedly slipped and fell in August 2016 in a hallway of a skilled nursing facility owned and operated by the defendants. She claimed personal injuries and alleged, in substance, that the floor was dangerously slippery because of wax. After discovery, defendants presented evidence that there had been no negligent application of wax to the floor. The plaintiff opposed summary judgment with an affidavit that the court found raised feigned issues of fact inconsistent with her earlier deposition testimony.

PROCEDURAL HISTORY

The plaintiff commenced an action for personal injuries after allegedly slipping and falling in a hallway of defendants' skilled nursing facility. After discovery, defendants moved for summary judgment. The Supreme Court, Kings County, denied the motion, and defendants appealed. The Appellate Division reversed and granted summary judgment dismissing the complaint.

DISPOSITION

reversed

CASES CITED

- Union v Excel Commercial Maintenance, 185 AD3d 869, 869-870
- Faiella v Oradell Constr. Co., Inc., 171 AD3d 1013, 1014
- Galler v Prudential Ins. Co. of Am., 63 NY2d 637, 638
- Khaimova v Osnat Corp., 21 AD3d 401, 402
- Alvarez v Staten Is. R.T. Operating Auth., 225 AD3d 830, 831
- Kapoor v Randlett, 144 AD3d 984, 985
- Lee v Rite Aid of N.Y., Inc., 261 AD2d 368, 368-369
- Paul v Roman Catholic Church of Holy Innocents, 226 AD2d 515, 515
- Meriweather v Green W. 57th St., LLC, 156 AD3d 875, 876
- Carriero v Nazario, 116 AD3d 818, 819
- Wright v South Nassau Communities Hosp., 254 AD2d 277, 278
- Cook v Rezende, 32 NY2d 596, 599
- Walsh v Super Value, Inc., 76 AD3d 371, 376

OPINION

Brener v. Queens Blvd. Extended Care Facility Corp. 2026 NY Slip Op 02240

PER CURIAM.

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C. Medina of counsel), for appellants.

Harmon, Linder & Rogowsky (Mitchell Dranow, Sea Cliff, NY, of counsel), for respondent.

DECISION & ORDER

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Larry Martin, J.), dated March 11, 2024. The order denied the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The plaintiff allegedly was injured in August 2016, when she slipped and fell in a hallway of a skilled nursing facility owned and operated by the defendants. Thereafter, the plaintiff commenced this action to recover damages for personal injuries. Following the completion of discovery, the defendants moved for summary judgment dismissing the complaint. In an order dated March 11, 2024, the Supreme Court denied the defendants' motion. The defendants appeal.

"A defendant may not be held liable for the application of wax, polish, or paint to a floor . . . unless the defendant had actual, constructive, or imputed knowledge that the product could render the floor dangerously slippery" (*Union v Excel Commercial Maintenance*, 185 AD3d 869, 869-870 [internal quotation marks omitted]; *see* *Faiella v Oradell Constr. Co., Inc.*, 171 AD3d 1013, 1014). "A prima facie case of the negligent application of wax may be established by evidence that a dangerous residue of wax was present on the floor" (*Galler v Prudential Ins. Co. of Am.*, 63 NY2d 637, 638). "In the absence of evidence of a negligent application of floor wax or polish, the mere fact that a smooth floor may be shiny or slippery does not support a cause of action to recover damages for negligence, nor does it give rise to an inference of negligence" (*Khaimova v Osnat Corp.*, 21 AD3d 401, 402; *see* *Alvarez v Staten Is. R.T. Operating Auth.*, 225 AD3d 830, 831; *Kapoor v Randlett*, 144 AD3d 984, 985).

Here, the defendants established their prima facie entitlement to judgment as a matter of law dismissing the complaint by demonstrating that there was no negligent application of wax to the floor (*see* *Kapoor v Randlett*, 144 AD3d at 985; *Khaimova v Osnat Corp.*, 21 AD3d at 402; *Lee v Rite Aid of N.Y., Inc.*, 261 AD2d 368, 368-369; *Paul v Roman Catholic Church of Holy Innocents*, 226 AD2d 515, 515).

In opposition, the plaintiff failed to raise a triable issue of fact. The affidavit she submitted in opposition to the motion merely raised what appeared to be feigned issues of fact designed to avoid the consequences of her earlier deposition testimony and, therefore, was insufficient to defeat summary judgment (*see* *Meriweather v Green W. 57th St., LLC*, 156 AD3d 875, 876; *Carriero v Nazario*, 116 AD3d 818, 819; *Wright v South Nassau Communities Hosp.*, 254 AD2d 277, 278). Moreover, since the plaintiff failed to raise a triable issue of fact in opposition to the defendants' prima facie showing that no dangerous condition existed, "usual questions of notice of the condition are irrelevant" (*Cook v Rezende*, 32 NY2d 596, 599; *see* *Walsh v Super Value, Inc.*, 76 AD3d 371, 376).

Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the

complaint.

LASALLE, P.J., CONNOLLY, VENTURA and GOLDBERG VELAZQUEZ, JJ., concur.

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