

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

Rhee v. Apple, Inc.

Rhee, 2025 NY Slip Op 07324 (Supreme Court of the State of New York Appellate Division Second Department 2025) · No. 2024-04403 · Decided December 24, 2025

SUMMARY

The Appellate Division, Second Department affirmed the denial of Apple, Inc. and related defendants’ motion for summary judgment in a personal-injury trip-and-fall action. The court held that the defendants failed to establish that the collapsed cardboard boxes were not an inherently dangerous condition, that Apple did not create the condition, or that the property owner satisfied its sidewalk-maintenance obligation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Paul Wooten, J.; Barry E. Warhit, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 24, 2025
DOCKET	2024-04403
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order of the Supreme Court, Kings County, denying their motion for summary judgment dismissing the personal-injury complaint.
STANDARD OF REVIEW	Summary judgment is reviewed under the standard requiring the movant to establish prima facie entitlement to judgment as a matter of law; in evaluating the evidence, the court views it in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Apple, Inc., Redbridge Bedford, LLC, incorrectly sued as 247 Bedford Associates, LLC, Redsky Management, LLC v. Judy Rhee

TOPICS

premises liability summary judgment negligence personal injury standard of review

PRACTICE AREAS

premises liability personal injury negligence civil procedure

QUESTIONS PRESENTED

1. Whether defendants established prima facie entitlement to summary judgment by showing that the sidewalk condition was open and obvious and not inherently dangerous.
2. Whether defendants established that Apple did not create the hazardous condition through its garbage-disposal practices.
3. Whether Redbridge established that it satisfied its duty under Administrative Code of the City of New York § 7-210 to maintain the sidewalk in a reasonably safe condition.

HOLDINGS

1. Defendants were not entitled to summary judgment because they failed to establish that the collapsed cardboard boxes were not an inherently dangerous tripping hazard or that the condition could not fairly be attributed to defendants' negligence or negligent maintenance.
2. Defendants failed to establish that Apple did not create the condition because they submitted no evidence concerning Apple's garbage disposal on the day of the accident and no custom-and-practice evidence from which lack of negligence could be inferred.
3. Redbridge failed to establish that it satisfied its obligation under Administrative Code of the City of New York § 7-210 because defendants submitted no evidence showing when the sidewalk was last cleaned or inspected.

KEY QUOTATIONS

*“A defendant moving for summary judgment in a trip-and-fall case generally has the initial burden of establishing, prima facie, that it neither created nor had actual or constructive notice of the alleged hazardous condition for a sufficient length of time to discover and remedy it” (*1)*

*“Viewing the evidence in the light most favorable to the plaintiff, it established that the plaintiff was unable to safely avoid the collapsed stack of cardboard boxes covering the sidewalk” (*2)*

FACTUAL BACKGROUND

Judy Rhee allegedly tripped and fell on collapsed cardboard boxes covering a Brooklyn sidewalk adjacent to property owned by Redbridge and Redsky and leased to Apple. She testified that garbage and recycling bags, parked cars, and a tree bed prevented her from safely going around the boxes, so she attempted to walk over them and caught her foot on a box. The defendants submitted her deposition testimony but no evidence regarding Apple's garbage-disposal practices on the accident date or the timing of Redbridge's last sidewalk cleaning or inspection.

PROCEDURAL HISTORY

Judy Rhee commenced a personal-injury action after tripping over collapsed cardboard boxes covering a Brooklyn sidewalk. The defendants moved for summary judgment, arguing, among other things, that the condition was open and obvious and not inherently dangerous, and that they lacked responsibility for or notice of the condition. The Supreme Court, Kings County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Piltie v. Ofori, 223 AD3d 688, 688
- Leem v. 152-24 N., LLC, 201 AD3d 918, 919
- Naftaliyeva v. Shoprite of Ave. I, 233 AD3d 793, 794
- Parrinello v. Independence Plaza SC, LLC, 189 AD3d 1441, 1443
- Crosby v. Southport, LLC, 169 AD3d 637, 640
- Cupo v. Karfunkel, 1 AD3d 48, 53
- Bazdaric v. Almah Partners LLC, 41 NY3d 310, 316
- DiScalo v. Mannix Family Mkt. Forest & Richmond Ave, LLC, 206 AD3d 693, 694
- Mathis v. D.D. Dylan, LLC, 119 AD3d 908, 909
- Galetta v. Galetta, 21 NY3d 186, 197-198
- Huertas v. Town of Smithtown, 226 AD3d 656, 658
- Wendy-Geslin v. Oil Doctors, 226 AD3d 727, 730
- Weinburg v. 235 Ocean Assoc., LLC, 108 AD3d 524, 525

OPINION

PER CURIAM.

Rhee v Apple, Inc. (2025 NY Slip Op 07324) Rhee v Apple, Inc. 2025 NY Slip Op 07324 Decided on December 24, 2025 Appellate Division, Second 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 on December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

PAUL WOOTEN BARRY E. WARHIT LOURDES M. VENTURA, JJ. 2024-04403 (Index No. 522563/20) [*1]Judy Rhee, respondent, v Apple, Inc., et al., appellants. ArentFox Schiff LLP, New York, NY (Katia Asche of counsel), for appellants. Sullivan Papain Block McManus Coffinas &

Cannavo P.C., New York, NY (Stephen C. Glasser and Christopher J. DelliCarpini 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 (Robin K. Sheares, J.), dated February 22, 2024. The order denied the defendants' motion for summary judgment dismissing the complaint. **ORDERED** that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries that she allegedly sustained when she tripped and fell on a sidewalk in Brooklyn. The property adjacent to the sidewalk was owned by the defendant Redbridge Bedford, LLC (hereinafter Redbridge), incorrectly sued herein as 247 Bedford Associates, LLC, and Redsky Management, LLC, and leased to the defendant Apple, Inc. (hereinafter Apple).

The defendants moved for summary judgment dismissing the complaint. The defendants submitted, inter alia, a transcript of the deposition testimony of the plaintiff. The plaintiff testified that she was walking on the sidewalk and noticed stacks of cardboard boxes on her right, against the defendants' property, some of which were collapsed and had toppled over, covering the sidewalk.

In that same area, the plaintiff saw bags of garbage and recycling on her left, next to the curb, and to her right in front of the stacked cardboard boxes. The plaintiff was unable to go around the cardboard boxes on the sidewalk because of the garbage and recycling bags, cars parked "front to back," with no gap at the curb, and an adjacent tree bed that she was not comfortable walking into.

As the plaintiff attempted to walk over the cardboard boxes on the sidewalk, her foot caught on the corner of a box and she tripped and fell. In support of their motion, the defendants contended, among other things, that they owed no duty to protect the plaintiff against an open and obvious condition that was not inherently dangerous.

In an order dated February 22, 2024, the Supreme Court denied the defendants' motion. The defendants appeal. A defendant moving for summary judgment in a trip-and-fall case generally has the initial burden of establishing, prima facie, that it neither created nor had actual or constructive notice of the alleged hazardous condition for a sufficient length of time to discover and remedy it (see *Piltie v Ofori*, 223 AD3d 688, 688; *Leem v 152-24 N., LLC*, 201 AD3d 918, 919).

A defendant may also demonstrate its entitlement to summary judgment by establishing that the condition which caused the plaintiff's injury was both open and obvious and, as a matter of law, was not inherently [*2]dangerous (see *Naftaliyeva v Shoprite of Ave. I*, 233 AD3d 793, 794; *Parrinello v Independence Plaza SC, LLC*, 189 AD3d 1441, 1443). Contrary to the defendants' contention, they failed to establish that the condition which caused the plaintiff's injury was not an inherently dangerous tripping hazard or that it could not fairly be attributed to any negligence or

negligent maintenance on the defendants' part (see *Parrinello v Independence Plaza SC, LLC*, 189 AD3d at 1443; *Crosby v Southport, LLC*, 169 AD3d 637, 640; *Cupo v Karfunkel*, 1 AD3d 48, 53).

Viewing the evidence in the light most favorable to the plaintiff (see *Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316), it established that the plaintiff was unable to safely avoid the collapsed stack of cardboard boxes covering the sidewalk (cf. *DiScalo v Mannix Family Mkt. Forest & Richmond Ave, LLC*, 206 AD3d 693, 694; *Mathis v D.D. Dylan, LLC*, 119 AD3d 908, 909).

Moreover, the defendants failed to establish that Apple did not create the condition which caused the plaintiff's injury, as they submitted no evidence regarding Apple's garbage disposal on the day of the plaintiff's accident or evidence of a custom and practice establishing a strict routine from which a lack of negligence could be inferred (see *Galetta v Galetta*, 21 NY3d 186, 197-198; *Huertas v Town of Smithtown*, 226 AD3d 656, 658).

Similarly, the defendants failed to establish that Redbridge satisfied its obligation under the Administrative Code of the City of New York § 7-210 to maintain the sidewalk in a reasonably safe condition, as the defendants submitted no evidence as to when the sidewalk was last cleaned or inspected (see *Wendy-Geslin v Oil Doctors*, 226 AD3d 727, 730; *Weinburg v 235 Ocean Assoc., LLC*, 108 AD3d 524, 525).

The defendants' remaining contentions either are without merit or need not be reached in light of our determination. Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint. BRATHWAITE NELSON, J.P., WOOTEN, WARHIT and VENTURA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

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As the plaintiff attempted to walk over the cardboard boxes on the sidewalk, her foot caught on the corner of a box and she tripped and fell. In support of their motion, the defendants contended, among other things, that they owed no duty to protect the plaintiff against an open and obvious condition that was not inherently dangerous.

In an order dated February 22, 2024, the Supreme Court denied the defendants' motion. The defendants appeal. A defendant moving for summary judgment in a trip-and-fall case generally has the initial burden of establishing, *prima facie*, that it neither created nor had actual or constructive notice of the alleged hazardous condition for a sufficient length of time to discover and remedy it (*see Piltie v Ofori*, 223 AD3d 688, 688; *Leem v 152-24 N., LLC*, 201 AD3d 918, 919).

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Viewing the evidence in the light most favorable to the plaintiff (see *Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316), it established that the plaintiff was unable to safely avoid the collapsed stack of cardboard boxes covering the sidewalk (cf. *DiScalo v Mannix Family Mkt. Forest & Richmond Ave, LLC*, 206 AD3d 693, 694; *Mathis v D.D. Dylan, LLC*, 119 AD3d 908, 909).

Moreover, the defendants failed to establish that Apple did not create the condition which caused the plaintiff's injury, as they submitted no evidence regarding Apple's garbage disposal on the day of the plaintiff's accident or evidence of a custom and practice establishing a strict routine from which a lack of negligence could be inferred (see *Galetta v Galetta*, 21 NY3d 186, 197-198; *Huertas v Town of Smithtown*, 226 AD3d 656, 658).

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