

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

E.M. v. Paulino

E.M., 2026 NY Slip Op 01730 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Case No. 2025-04260; Appeal No. 6181; Index No. 809824/21 · Decided March 24, 2026

SUMMARY

The Appellate Division, First Department affirmed the denial of defendants' motion for summary judgment dismissing a negligence claim arising from alleged bedbug bites suffered by an infant plaintiff. The court held that issues of fact existed regarding when defendants, who co-owned the premises, had notice of the bedbug condition and whether they failed to act.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Shulman, J.; Rodriguez, J.; Higgitt, J.; Rosado, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	March 24, 2026
DOCKET	Case No. 2025-04260; Appeal No. 6181; Index No. 809824/21
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying defendants' motion for summary judgment dismissing the negligence cause of action.
STANDARD OF REVIEW	Summary judgment is unavailable where the record presents triable issues of fact, and a movant cannot obtain summary judgment merely by pointing to gaps in the opposing party's proof.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Ynes Paulino et al. v. E.M., etc.

TOPICS

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

PRACTICE AREAS

premises liability

negligence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment dismissing the negligence cause of action when the record presented factual disputes concerning when and whether they had notice of the bedbug condition.
2. Whether defendants established entitlement to summary judgment by identifying gaps in plaintiff's proof.

HOLDINGS

1. Summary judgment was properly denied because issues of fact existed as to when and whether defendants had notice of the bedbug condition that allegedly injured the infant plaintiff.
2. A party cannot obtain summary judgment merely by pointing to gaps in its adversary's proof.

KEY QUOTATIONS

“cannot obtain summary judgment by pointing to gaps in [its adversary's] proof”

FACTUAL BACKGROUND

The infant plaintiff allegedly suffered injuries from bedbug bites in an apartment co-owned by defendants. The record contained conflicting evidence concerning when defendants knew or should have known of the bedbug condition, including testimony about direct complaints and the child's continued bites during the summer of 2019. HPD records supported the mother's testimony that she made an HPD/311 complaint more than a month before the infant was bitten, while one defendant could not recall receiving notice of any 311 complaints.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied defendants' motion for summary judgment dismissing the negligence claim. The Appellate Division, First Department, affirmed the order to the extent appealed from and limited by the briefs.

DISPOSITION

affirmed

CASES CITED

- *Martinez v Contreras*, 216 AD3d 532, 532 (1st Dept 2023)
- *Miah v Pipe Dreams Realty V Corp.*, 214 AD3d 575, 576 (1st Dept 2023)
- *Mohammed v Silverstein Props., Inc.*, 74 AD3d 453, 454 (1st Dept 2010)

OPINION

PER CURIAM.

E.M. v Paulino (2026 NY Slip Op 01730) E.M. v Paulino 2026 NY Slip Op 01730 Decided on March 24, 2026 Appellate Division, First 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 and Entered: March 24, 2026 Before: Manzanet-Daniels, J.P., Shulman, Rodriguez, Higgitt, Rosado, JJ. Index No. 809824/21|Appeal No. 6181|Case No. 2025-04260| [*1]E.M., etc., Respondent, v Ynes Paulino et al., Appellants.

Scahill Law Group PC, Bethpage (Keri A. Wehrheim of counsel), for appellants. Law Office of Beth S. Gereg, Smithtown (Beth S. Gereg of counsel), for respondent. Order, Supreme Court, Bronx County (Paul L. Alpert, J.), entered June 24, 2025, which, to the extent appealed from as limited by the briefs, denied defendants' motion for summary judgment dismissing the cause of action for negligence, unanimously affirmed, without costs.

The record presents issues of fact as to when and whether defendants had notice of the bedbug condition that allegedly injured the infant plaintiff. Although some of plaintiff's mother's testimony indicated that her direct complaints to defendants, who co-owned the premises, occurred only after the bedbug bites began, other testimony showed that plaintiff continued to suffer from bites for a period of time throughout the summer of 2019 without any action from defendants (see *Martinez v Contreras*, 216 AD3d 532, 532 [1st Dept 2023]).

Moreover, Department of Housing Preservation and Development (HPD) records support plaintiff's mother's testimony that she made an HPD/311 complaint about bedbugs in her apartment more than a month before plaintiff was bitten, and one of the defendants testified that he did not remember whether he received notice of any 311 complaints. Defendants otherwise failed to establish entitlement to judgment as a matter of law, as a party "cannot obtain summary judgment by pointing to gaps in [its adversary's] proof" (*Miah v Pipe Dreams Realty V Corp.*, 214 AD3d 575, 576 [1st Dept 2023] [internal quotation marks omitted]; see *Mohammed v Silverstein Props., Inc.*, 74 AD3d 453, 454 [1st Dept 2010]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 24, 2026