

Vargas v Stone

2025 NY Slip Op 35057(U)

December 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 521952/2022

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 29th day of December 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

CARMELO VARGAS,

Plaintiff(s),

-against-

SHAUNETTE STONE, MARLENE WRIGHT
EUNICE BUGBEE and LYNDONNA ANDREWS,

Defendant(s).

DECISION & ORDER

Index No.: 521952/2022

Motion Seq.: 002

Return Date: 09/11/2025

Recitation of the following papers as required by CPLR 2219(a):

	NYSCEF Papers Numbered
Notice of Motion and Supporting Documents	39-53
Affirmation in Opposition and Supporting Documents	54-58
Reply Affirmation and Supporting Documents	60-62

Upon the foregoing papers, the decision and order of the Court is as follows:

Introduction

Plaintiff commenced this action seeking damages for personal injuries sustained while delivering furniture to defendants' premises. Defendants have moved this Court for an order permitting leave to file a late motion for summary judgment per CPLR § 3212 dismissing this action.

Facts

The accident occurred when plaintiff slipped and fell on the interior staircase. It is conceded by plaintiff that when he arrived, it was raining. Upon entering the premises, plaintiff

“slipped on the first step between the second and third floors because the step was wet from the rain and snow outside” (NYSCEF 54, ¶22).

Procedural History

Plaintiff filed the note of issue on 01/09/2025. Defendant then moved for order (1) striking the note of issue due to outstanding discovery and (2) an extension of time to file a motion for summary judgment. Per the local Rules of Kings County Supreme Court, dispositive motions must be served 60 days after the filing of the Note of Issue. On the 60th day, the Judge in the Central Compliance Part issued an order dated 3/9/2025 directing plaintiff to provide the outstanding discovery and denying the extension of time to file a summary judgment motion with leave to renew before the Individual Assignment Judge.

Therefore, defendants filed the current motion seeking renewing their motion for leave to file a dispositive motion and upon granting leave, dismissing this action per CPLR § 3212 because defendants bear no liability for the happening of plaintiff’s accident.

Analysis

“CPLR §3212 [a] grants a court considerable discretion to fix a deadline for filing summary judgment motions...In Kings County, a party is required to make its motion for summary judgment no more than 60 days after the note of issue is filed, unless it obtains leave of the court on good cause shown.” (*Munoz v Agenus, Inc.*, 207 AD3d 643, 644 [2d Dept 2022] [internal quotations and citations omitted]). Leave to serve a late motion for summary judgment is appropriate where a party demonstrates that “that the note of issue was filed while there was significant discovery outstanding which was essential to the motion” (*Id.*).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). “A party moving for summary judgment must make a

prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. A failure to demonstrate prima facie entitlement to a summary judgment motion requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The motion for leave to file a late motion for summary judgment is granted and, upon granting leave, this action is dismissed per CPLR § 3212.

Defendants have demonstrated good cause in that the outstanding discovery concerning plaintiff’s social media was essential to the motion because he testified that his attorneys directed him to make his Facebook, Instagram and TikTok accounts private. Therefore, the Judge in the Central Compliance Part directed plaintiff to make his social media accounts available to defendants’ technician. The Courts have held that social media information is discoverable and relevant if it conflicts with plaintiff’s claims (*Forman v Henkin*, 30 NY3d 656 [2018]; *Abedin v Osorio*, 188 AD3d 764 [2d Dept 2020]). When defendants filed this motion two months later on 5/9/2025, plaintiff had only recently provided the information on 4/22/2025 and defendants’ technician did not have an opportunity to review it.¹

Defendants established as a matter of law that they were not negligent for the happening of this accident because it is undisputed that plaintiff’s accident happened during an ongoing storm (*Battaglia v MDC Concourse Centr., LLC*, 34 NY3d 1164, 1164-1165 [2020] and *Sherman*

¹ It is noted that defendants requested that if the Court denied this motion, the denial should be with leave to renew once the social media information was analyzed by their technician.

v New York State Thruway Auth., 27 NY3d 1019, 1020-1021 [2006]). Although landowners owe a duty of care to keep their property in a reasonably safe condition, they “will not be held liable in negligence for a plaintiff’s injuries sustained as the result of a [] condition occurring during an ongoing storm or for a reasonable time thereafter” (*Sherman v New York State Thruway Auth.*, 27 NY3d 1020-1021).

The Court has considered the plaintiff’s remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that the branch of defendants’ motion for leave to file a late motion for summary judgment per CPLR § 3212, is GRANTED, and it is further

ORDERED that the branch of defendants’ motion for an order per CPLR § 3212 dismissing this action is GRANTED, and it is further

ORDERED that this action is dismissed in its entirety and the Clerk of the Court shall enter judgment accordingly.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: 12/29/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____