

**Lenzini v Vincenzo Gambino & Rosaria Gambino
Irrevocable Living Trust**

2026 NY Slip Op 30327(U)

January 23, 2026

Supreme Court, Kings County

Docket Number: Index No. 515949/2023

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 23rd day of January 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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ANN LENZINI,

Plaintiff,

-against-

THE VINCENZO GAMBINO AND
ROSARIA GAMBINO IRREVOCABLE LIVING
TRUST, JOSEPHINE POLITI, et. al.,

Defendants.

Index No. 515949/2023

Cal. No. 3-4 MS 1-2

Decision and Order

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The following e-filed papers read herein:

MS 1
MS 2

NYSCEF Doc Nos.
36-49; 77; 81-83; 87; 91
53-62; 79; 84-86; 89; 92

The motion by defendant, The Vincenzo Gambino and Rosaria Gambino Irrevocable Trust (hereinafter "Trust"), seeking summary judgment dismissing plaintiff's complaint, and the cross-motion by defendants, JV Palermo Pastry Shop Inc., Josephine Politi, and Vincenzo (collectively, the "Pastry Shop"), also seeking summary judgment dismissing plaintiff's complaint, are decided as follows:

On December 22, 2022, plaintiff was a patron at Palermo Bakery, located at 5517 Avenue N in Brooklyn, New York, when she slipped and fell on what she contends was mop water on the

outside step of the bakery as she was exiting the store. The Pastry Shop owns the bakery which is located on the first floor of the building. The building is owned by the Trust. The Pastry Shop and the Trust are equally owned by defendants, Josephine Politi and her husband, Vincenzo Politi, and his parents, Vincenzo and Rosario Gambino. It is plaintiff's position that defendants caused and created the dangerous condition by negligently mopping the subject outside step and failing to safeguard their patrons from slipping and falling on the mop water.

On September 16, 2025, plaintiff filed the note of issue certifying the completion of discovery. Both sets of defendants, the Trust and Pastry Shop, seek summary judgment dismissing the complaint on the ground that they had no actual or constructive notice of the subject mop water or wetness on the outside step. The Pastry Shop also claims that they did not cause or create the wet condition, denying that any mopping occurred on the morning of the incident. The Trust additionally contends that it is entitled to summary judgment because it is not responsible for maintaining the area but rather, that the tenant, the Pastry Shop, is responsible.

The Pastry Shop opposes granting the Trust summary judgment on its cross-claims arguing that liability should rise or fall equally against the two sets of defendants because (1) the Pastry Shop and Trust entities are owned by the same four individuals; (2) Josephine Politi, who was produced to testify on behalf of both entities, testified that both the Pastry Shop and Trust were equally responsible for maintenance of the building; (3) the step was an outside step; and (4) there is no lease between the two entities stating what responsibilities each entity holds.

While plaintiff takes no position on the Trust's application for summary judgment insofar as it is premised on the argument that it had no control over the means and methods of mopping at the subject bakery, on the issue of mopping, plaintiff counters that her testimony creates a triable issue. Specifically, that she testified that she observed clear signs and markings of mopping on

the subject step. Plaintiff points out that defendants' only witness with any recollection of that day, Ms. Politi, has a gap in her observations in that she was unable to observe, with any consistency or constancy, the front entryway where plaintiff slipped and fell. Further, that Ms. Politi admitted, at her deposition, that her vision of the front entryway was obstructed by the multiple customers who were in the common area inside the store, and that this fact is further confirmed by Ms. Politi's testimony that she did not observe any portion of plaintiff's fall or the aftermath of emergency personnel arriving on scene to scoop up plaintiff. Given the differing testimonies and the fact that the court must construe the evidence in the light most favorable to plaintiff, plaintiff argues that defendants are not entitled to summary judgment.

Discussion


It is well established that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a material and triable issue of fact (*T. Mina Supply v Clemente Bros. Contr. Corp.*, 194 AD3d 879, 881 [2d Dept 2021]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*id. citing Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505[2012] [citation omitted]).

"A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it" (*Frazier v City of New York*, 47 AD3d 757, 758 [2d Dept 2008] [citations omitted]).

Here, there is a clear triable issue regarding whether someone in defendants' employ or control created the hazardous condition or whether plaintiff slipped completely on her own, as asserted by defendants. In addition, the Trust fails to establish that it is an out-of-possession landlord not responsible for maintaining the area since there is no lease delineating the duties between landlord and tenant (*see Azumally v 16 W. 19th LLC*, 79 AD3d 922, 923 [2d Dept 2010]), and defendants' own witness testified that maintenance of the area was the responsibility of both entities. Moreover, given the defendants' position that nobody under their control conducted any mopping of the area at or near the time of the accident, in the event plaintiff's testimony is credited, the Trust fails to establish that only the Pastry Shop could have mopped the outside step.

Based on the foregoing, the motions by the Trust and Pastry Shop seeking summary judgment are denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.