Florexil v Hampshire Arms Owners Corp.
2026 NY Slip Op 31911(U)
May 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 516073/2021
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 5th day of May 2026.

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

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NORLINE FLOREXIL,

Plaintiff(s),

-against-

HAMPSHIRE ARMS OWNERS CORP. and FIRST SERVICE RESIDENTIAL NEW YORK, INC.,

Defendant(s).

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DECISION & ORDER

Index No.: 516073/2021

Motion Seq.: 005

Return Date: 04/23/2026

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

	NYSCEF Papers Numbered
Notice of Motion and Supporting Documents	60-68
Affirmation in Opposition and Supporting Documents	71-74
Reply Affirmation and Supporting Documents	76

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

Plaintiff commenced this action to recover damages for personal injuries sustained on the premises owned by defendant Hampshire Arms Owners Corp. (Hampshire) and managed by First Residential New York, Inc. (First Residential). Defendants have moved for summary judgment dismissing the complaint per CPLR § 3212. The motion is granted.

It is alleged that plaintiff was injured when she tripped over an elevator mechanic's toolbox as she exited an elevator on 5/29/2021. The mechanic was employed by a non-party Geneco Elevator who was contracted to service the two elevators at the premises. Plaintiff did not report this incident to defendants or complete an incident report. In support of the motion, defendants submitted an email from the mechanic, Henry Cuesta, dated 5/31/2021. Within this

email, Mr. Cuesta stated that he notified the building superintendent of the incident before he left the building. Further, he was called to return to the premises later that same day and spoke with the superintendent again. However, the superintendent denies speaking with Mr. Cuesta on 5/29/2021. Rather, the superintendent testified that he learned of the accident on 5/30/2021. He was also unaware that an employee from Geneco Elevator was at the premises on 5/29/2021. In opposition, plaintiff argues that defendants failed to keep the premises in a safe condition and place warnings concerning the fact that the elevator was being serviced.

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. However, a failure to demonstrate a *prima facie* entitlement to 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 Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.,* 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.,* 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop &*

Stop, Inc., 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

Viewing the evidence in the light most favorable to plaintiff, the motion is granted (*Negri v Shop & Stop, Inc*., 65 NY2d 626). The toolbox at issue was in the exclusive possession and control of the mechanic, an independent contractor. Defendants' employees were not present at the time of the accident supervising the mechanic. Therefore, even if defendants are charged with constructive notice of regular elevator repairs and inspections, there is no evidence to establish that defendants had constructive notice of the fact that the elevator mechanic had previously blocked the door of the elevator with a toolbox creating a dangerous condition as people would exit the elevator. Thus, the motion must be denied (*Simmons v Metropolitan Life Ins. Co.,* 84 NY2d 972, 974 [1994] [A finding of constructive notice cannot be based on speculation.]). It is also speculation that a warning would have alerted plaintiff to the placement of a toolbox on the floor.

The Court has considered the plaintiff's remaining contentions and found same to be without merit.

Accordingly, it is hereby

ORDERED that defendants' motion for an order of summary judgment dismissing the complaint per CPLR § 3212 is GRANTED, and it is further

ORDERED that this action is dismissed in its entirety.

This constitutes the decision and order of the Court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 5/5/2026