

Creamer v City of New York
2026 NY Slip Op 31118(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Index No. 452280/2017
Judge: Ariel D. Chesler
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X

ROSEMARY CREAMER,

Plaintiff,

- v -

THE CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.

Defendant.

-----X

INDEX NO. 452280/2017

MOTION DATE 10/09/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

In this proceeding, defendant the City of New York (“the City”) moves for an Order pursuant to CPLR § 3212 granting summary judgment and dismissing all claims and crossclaims as against the City.

This action arises out of personal injuries allegedly sustained by the plaintiff on June 16, 2015, when she was in the crosswalk on West 24th Street and Broadway where she slipped and fell on a metal plate that accumulated rainwater. Plaintiff commenced this action by the filing of a Summons and Complaint in Queens County on September 7, 2016 (*see* NYSCEF Doc. No. 51). The action was subsequently transferred to New York County on February 8, 2017 (*see* NYSCEF Doc. No. 52). On December 7, 2016, the City filed its Answer (*see* NYSCEF Doc. No. 53).

In support of the motion, the City argues it is entitled to summary judgment because it did not receive prior written notice of the roadway condition as required by New York City

Administrative Code § 7-201. The City argues that as a result of plaintiff's allegations, the Department of Transportation ("DOT") conducted a search for records pertaining to the subject location. The City submits an Affirmation from Lorenzo Bucca, a DOT record searcher, wherein she affirms that she performed a two-year search for the two years prior to and including June 16, 2015, for the location of the roadway intersection located at 5th Avenue and West 24th Street and segment/block searches for West 24th Street between 5th Avenue and 6th Avenue and West 24th Street between Broadway and 6th Avenue (*see* NYSEF Doc. Nos. 63-64).

She affirms that the intersection searched revealed: fourteen (14) permits located; twelve (12) OCMC permits located; six (6) MOSAICS pothole records located; zero (0) online pothole records located; zero (0) OCMC records located; zero (0) HIQA permit records located; two (2) DASH inspections located; one (1) DASH additional inspections located; zero (0) NOV's located; zero (0) CARs located; zero (0) NICAs located; zero (0) AIMS violation records located; zero (0) HIQA OATH-ECB records located; zero (0) Pavement Works maintenance and repair records located; one (1) Siebel 311 complaints located; zero (0) MS Dynamics 311 complaints located; zero (0) ARTS complaints records located; zero (0) Notice of Claim records located; zero (0) Notice of Claim SS records located; zero (0) iPhone records located; zero (0) social media tracking records located; zero (0) special events records located; zero (0) sidewalk complaints located; zero (0) CURB records located; zero (0) CRAX records located; two (2) Big Apple Maps; and two (2) additional MOSAICS handwritten gangsheets/pothole crew records (*id.*).

Furthermore, she affirms the segment search revealed: three-hundred eighty-one (381) permits located; one-hundred fifty-nine (159) OCMC permits located; six (6) MOSAICS pothole records located; zero (0) online pothole records located; zero (0) OCMC records located; fifteen

(15) HIQA permit records located; one-hundred seventy-six (176) DASH inspections located; forty-five (45) DASH additional inspections located; ten (10) NOV's located; seven (7) CARs located; one (1) NICAs located; eleven (11) AIMS violation records located; ten (10) HIQA OATH-ECB records located; zero (0) Pavement Works maintenance and repair records located; eight (8) Siebel 311 complaints located; zero (0) MS Dynamics 311 complaints located; one (1) ARTS complaints records located; zero (0) Notice of Claim records located; zero (0) Notice of Claim SS records located; zero (0) iPhone records located; zero (0) social media tracking records located; zero (0) special events records located; zero (0) sidewalk complaints located; zero (0) CURB records located; zero (0) CRAX records located; six (6) Big Apple Maps; and two (2) additional MOSAICS handwritten gangsheets/pothole crew records.

However, the City argues that none of the above-mentioned records provide the City with prior written notice. The City attests that permits revealed in the search do not constitute prior written notice, and as such, the fourteen (14) permits and twelve (12) OCMC permits located in the intersection search, and the three-hundred eighty-one (381) permits, one-hundred fifty-nine (159) OCMC permits and fifteen (15) HIQA permit records located in the segment search do not constitute prior written notice of the condition alleged to have caused plaintiff's accident. Moreover, the City claims the three (3) inspections found from the intersection search give no prior written notice of the alleged condition- accumulated rainwater on a recessed metal plate in the roadway.

The City also notes the one-hundred seventy-six (176) DASH inspections, the forty-five (45) DASH additional inspections located including: ten (10) NOV's located, (7) CARs located and one (1) NICA located. The City maintains the other two-hundred and three (203) inspections included in the segment search resulted in a passing result, or work was not started in the area,

which does not provide prior written notice of a wet metal plate. The City asserts that as plaintiff alleges that accumulated rainwater on a square recessed metal plate caused her injuries, none of the inspections, CARs, NICAs, or NOV's give the City prior written notice.

In this same manner, the City argues none of the complaints here provide prior written notice as the complaints are unrelated to the condition that is alleged to have caused plaintiff's injury. In addition, the City states the maintenance and repair records/orders and the related gangsheets for roadway defects cannot provide the City with prior written notice as they only give notice of potholes or cave-ins in the roadway, not accumulated rainwater on a recessed plate.

The City claims that the Big Apple Maps revealed do not provide the City with prior written notice of the alleged condition as it does not reveal any relevant symbols representing a hazardous condition at the subject location where plaintiff's incident occurred.

Moreover, the City asserts that there is no evidence to establish the City immediately caused or created the defective condition that allegedly caused plaintiff's injuries, and therefore, is entitled to summary judgment. Furthermore, the City highlights that defendant Consolidated Edison Company of New York ("Con Ed") already admitted ownership and maintenance of the subject plate (*see* NYSCEF Doc. Nos. 65-66).

The Court notes that there is no opposition submitted in response to the City's motion.

ANALYSIS

The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. New York Univ. Med., Ctr.*, 64 NY2d 851 [1985]). "The proponent of summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact"

(*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant has satisfied this standard, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Kaufman V. Silver*, 90 NY2d 204 [1997]). In order to defeat a motion for summary judgment, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Elstein v. City of New York*, 209 A.D.2d 186 ([1st Dept 1994])). Mere conclusions, unsubstantiated allegations or assertions are insufficient to create an issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]).

Section 7-201 of the Administrative Code of the City of New York (hereinafter “§ 7-201”) limits the City’s duty of care over municipal streets and sidewalks by imposing liability only for the defects where the City had actual notice of the specific defect in the specified location. There are two exceptions to this rule, “that the municipality affirmatively created the defect through an act of negligence, or that a special use resulted in a special benefit to the locality” (*Yarborough v. City of New York*, 10 NY3d 726, 728 [2008]). For the City to be liable under the “cause and create” exception, the affirmative negligence must “immediately result in the dangerous condition” (*id.*; see also *Oboler v. City of New York*, 8 NY3d 888, 890 [2007]). “Where the City establishes that it lacked prior written notice under the Pothole Law, the burden shifts to the plaintiff to demonstrate the applicability of one of two recognized exceptions to the rule” (*Yarborough*, 10 NY3d at 728).

“Maps prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc., and filed with the Department of Transportation serve as prior written notice of defective conditions depicted herein” (*id.*). However, “the awareness of one defect in the area is insufficient to

constitute notice of a different particular defect which caused the accident” (*Roldan v. City of New York*, 36 AD3d 484 [1st Dept 2007]).

Here, the City has met its prima facie burden. None of the permits revealed in the DOT search provide prior written notice, as it is well-settled law that permits do not constitute prior written notice (*see Meltzer v. City of New York*, 156 AD2d 134 [1st Dept 1989]; *Bolanos v. City of New York*, 29 AD3d 455, 456 [1st Dept 2016] [holding permits issued by the City do not establish that the City had “prior actual or written notice of a dangerous condition in the roadway where plaintiff was injured”]). Additionally, the CARs, NOVs, NICAs, inspections, complaints, and special events reports do not provide the City with notice as they were either for a different defect than what plaintiff alleges caused her incident (*D’Onofrio v. City of New York*, 11 NY3d 581, 586 [2008]; *Belmonte v. Metro Life Ins. Co.*, 759 N.Y.S.2d38 [1st Dept 2003]; *see Batts v. City of New York*, 93 A.D3d 425 (1st Dept 2012); *see also Lopez v. Gonzalez*, 44 AD3d 1012 [2d Dept 2007] [“[C]ontrary to the plaintiffs contention, neither the citizen complaints nor the prior written repair orders constitute written notice of the defects”]).

Furthermore, the maintenance and repair orders/records, or gangsheets for the roadway defects do not provide the City with notice of the alleged defective condition (*Abott v. City of New York*, 114 AD3d 515, 516 [1st Dept 2014] [“Repair orders or reports, reflecting only that pothole repairs had been made to the subject area more than a year before the accident, are insufficient to constitute prior written notice of the defect that allegedly caused a plaintiff’s injuries]; *see also Lopez*, 44 AD3d at 1013 [“Even if the City had been provided with written notice of those prior defects, the plaintiff failed to present any evidence that the City received prior written notice of the subject defect following the repair”]).

In addition, the Big Apple Map also fails to provide the City with prior written notice, as there are no markings that indicate accumulated rainwater on a recessed plate in the area where plaintiff alleges her accident occurred (*Roldan*, 36 AD3d at 434; *D’Onofrio*, 11 NY3d at 585 [“Since the defect shown on the Big Apple Map was not the one on which the claim...was based, the lower courts in the case correctly set aside verdict and entered judgment in the City’s favor”]).

In sum, the facts and record evidence presented establish that the City had no prior written notice of the dangerous condition. In turn, plaintiff has not met the burden to show the City caused or created the condition alleged to have caused the incident, as plaintiff submitted no opposition at all.

Accordingly, it is hereby,

ORDERED, that City’s motion for summary judgment is granted and the case against City is therefore dismissed; and it is further

ORDERED, that the caption is amended to remove the City of New York as a named defendant in this action; and it is further

ORDERED, that this action shall be randomly reassigned to a General IAS Part.

This constitutes the Decision of the Court.

**HON. ARIEL D. CHESLER
J.S.C.**



ARIEL D. CHESLER, J.S.C.

3/23/2026

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN