Washington v City of New York
2026 NY Slip Op 31155(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Index No. 150356/2021
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

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MICHAEL WASHINGTON

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

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INDEX NO. 150356/2021

MOTION DATE 10/17/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

Upon the foregoing documents, it is

In this proceeding, the City of New York ("the City"), moves for an Order pursuant to CPLR 3212, granting the City summary judgment.

This action arises out of personal injuries allegedly sustained by plaintiff on November 11, 2019, when plaintiff was allegedly injured in the "street/roadway known as and located at Willet Street/Bialystoker Place, in between the two roadway/streets known as Delancey Street (*see* NYSCEF Doc. No. 14) due to a "dangerous/ defective hazardous and/or trap-like condition" (*see* NYSCEF Doc. No. ¶ 16).

Plaintiff commenced this action by the filing of a Summons and Complaint on January 12, 2021 (*see* NYSCEF Doc. No. 1). Issue was joined on July 1, 2021, when the City served its Answer (*see* NYSCEF Doc. No. 2).

In support, the City argues that it is entitled to summary judgment because it did not receive prior written notice of the subject condition pursuant to New York City Administrative Code § 7-201. The City avers that as a result of plaintiff's allegations and testimony, the

Department of Transportation ("DOT") conducted a search for records pertaining to the subject location (*see* NYSCEF Doc. Nos. 20-21). In support of this, the City submits the Affirmation of Ms. Grace Aitcheson, a DOT employee, who performed the search (*see* NYSCEF Doc. No. 21). She affirms that the search revealed the following records: zero (0) permits; zero (0) hardcopy permits; zero (0) applications; zero (0) Office of Construction Mitigation and Coordination (OCMC) files; zero (0) Corrective Action Requests (CARs); zero (0) Notices of Violation (NOVs); zero (0) Notifications for Immediate Corrective Action (NICAs); zero (0) inspections; zero (0) contracts; zero (0) maintenance and repair orders/records; zero (0) complaints; zero (0) gangsheets for roadway defects; zero (0) gangsheets for milling and resurfacing; zero (0) Office of Special Events records; and two (2) Big Apple Maps labeled as volume 1N, Pages 81 and 82 (*id.*).

The City attests that permits do not provide prior written notice. In addition, the City argues that there are no DOT records that could provide prior written notice. The City notes there are no complaints, inspections, violations, maintenance and repair orders, gangsheets, or special events reports listed in the search results. Moreover, the City claims that the Big Apple Maps listed in the search do not provide the City with prior written notice of the alleged defect at the subject location. The City remarks that a review of the key to the Big Apple Maps do not reveal any symbol at the subject location that would indicate a defect in the roadway at the subject location (*see* NYSCEF Doc. No. 20).

Additionally, the City argues it is entitled to summary judgment because it did not cause and create the alleged condition. The City asserts that, as stated above, there were zero permits yielded in the DOT search, and as such, there is no evidence to show that the City caused or created the subject condition.

In light of the facts and evidence presented, the City argues it is clear it did not have prior written notice of the allegedly defective condition pursuant to NYC Administrative Code § 7-201, and did not cause and create and immediately dangerous condition for which it may be held liable.

In opposition, plaintiff argues that defendant's response to the Case Scheduling Order ("CSO") was only recently served on June 24, 2025. Plaintiff avers that plaintiff has not yet been provided with an opportunity to conduct a deposition of the defendant relative to same or as to any other potential written notice that may satisfy NYC Administrative Code § 7-201. Plaintiff notes that pursuant to the CSO response there exists City records of the following relevant accident site but of which no supporting documents were provided: (1) Geosupport Online Adress Translator; and (2) NYC Department of Information and Technology and Telecommunications Web based Programs. Plaintiff claims that he should have an opportunity to depose a City witness and inquire concerning these documents to ascertain if any of same constitute prior written notice. In addition, plaintiff argues that on November 5, 2021, plaintiff served its demands upon defendant (*see* NYSCEF Doc. No. 24), including but not limited to, any copies of any Notices of Claim for the subject location in defendant's possession. To date, plaintiff argues that no response has been provided. As such, plaintiff argues that the motion should be denied at this time to afford plaintiff an opportunity to depose a witness of the defendant and/or obtain the existence of any other relevant discovery.

In reply, the City argues that its motion is not premature as all relevant discovery has been exchanged (*see* NYSCEF Doc. No. 20). The City also argues that plaintiff has not established the existence of any questions of fact, or materially disputed the City's showing that it lacked prior written notice of the condition at issue. The City maintains that as it exchanged a

two-year search for the location where plaintiff's alleged accident occurred, all relevant discovery has been exchanged and in plaintiff's possession. Furthermore, the City asserts no deposition testimony could alter the City's liability in this action. In response to plaintiff's argument about the City not responding to plaintiff's demand, the City argues per the CSO, "any party who wishes to obtain prior notices of claim, pursuant to GML § 50-g, may do so by contacting the Division Chief of Claims Support…to set up an appointment to search the index maintained at 1 Centre Street, New York, New York" (*see* NYSCEF Doc. No. 6). The City points out that the CSO was issued on September 15, 2023, and plaintiff had ample time to investigate and obtain prior notices of claim, as well as any documents related to other litigation at the accident site.

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 met its prima facie burden of demonstrating that it did not receive prior written notice as the City's records did not contain prior written notice of the particular defect in the crosswalk where plaintiff fell. Plaintiff's argument that the City's motion is premature is without merit (*Civic v. City of New York*, 215 AD3d 445, 446 [1st Dept 2023] ["[D]efendant's summary judgment motion was not premature, even in the absence of depositions of the Department of Transportation and Department of Environmental Protection, as the City offered affidavits of those agencies' employees' record searches along with the documents the searches

produced and plaintiff failed to show that further discovery would lead to relevant evidence"]; *Collins v. City of New York*, 158361/14, 2017 WL 944000 [Sup Ct, N.Y. County 2017]). Plaintiff does not argue that the DOT records reveal prior written notice, plaintiff only argues that he should be entitled to an opportunity to depose a City witness and inquire concerning the documents listed in the searches, and that the City never responded to a demand regarding prior lawsuits, and Notice of Claims served on the City regarding the same incident location. Without more, plaintiff's speculation is insufficient to overcome the City's prima facie showing (*DaSilva v. Haks Eng'rs, Architects & Land Surveyors, P.C.*, 125 AD3d 480, 482 [1st Dept 2015] ["Contrary to plaintiff's contention, defendants' motions were not premature although discovery was incomplete. 'A grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence'"] [internal citations omitted]; *Crimlis v. City of New York*, 179 AD3d 575, 576 [1st Dept 2020] ["[C]ontention that the motion was premature because the City's witnesses had not yet been deposed is unavailing. [A]ssertion that further discovery may uncover facts essential to establish opposition is based on nothing more than speculation. Additionally, [defendant/third-party plaintiff] failed to show that evidence necessary to defeat the motion was within the City's exclusive control"]).

Accordingly, it is hereby

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

ORDERED, that the Clerk shall enter judgment accordingly.

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

3/23/2026
DATE

ARIEL D. CHESLER, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE