

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D57380  
O/htr

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Argued - June 12, 2018

MARK C. DILLON, J.P.  
SHERI S. ROMAN  
JOSEPH J. MALTESE  
LINDA CHRISTOPHER, JJ.

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2017-01571

DECISION & ORDER

Judy Barrett, appellant, v City of New York,  
respondent.

(Index No. 8055/11)

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Sullivan Papain Block McGrath & Cannavo, P.C. (Stephen C. Glasser, Gabriel A. Arce-Yee, and Vito Cannavo of counsel), for appellant.

Zachary W. Carter, Corporation Counsel, New York, NY (Devin Slack and Richard Dearing of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Lara J. Genovesi, J.), dated January 3, 2017. The order granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On June 26, 2010, the plaintiff allegedly was injured when she tripped and fell on the edge of a pothole on East Third Street between Vanderbilt Street and Greenwood Avenue in Brooklyn. In April 2011, the plaintiff commenced this action against the City of New York, alleging that the City had prior written notice of the alleged condition. After discovery, the City moved for summary judgment dismissing the complaint on the ground that it did not receive prior written notice of the defect pursuant to Administrative Code of the City of New York § 7-201(c)(2). The Supreme Court granted the City's motion, and the plaintiff appeals.

The City demonstrated its prima facie entitlement to judgment as a matter of law dismissing the complaint by submitting evidence showing that it made a diligent search of its records and found no prior written notice (*see Tortorici v City of New York*, 131 AD3d 959, 959; *Ramos v*

*City of New York*, 55 AD3d 896, 897). In opposition, the plaintiff failed to raise a triable issue of fact. Contrary to the plaintiff's contention, the record of a complaint received through the Department of Transportation's 311 call center in March 2010 did not constitute a written acknowledgment of the alleged pothole that the plaintiff claims caused her to fall (*see Tortorici v City of New York*, 131 AD3d at 960; *Hogin v City of New York*, 103 AD3d 419, 419-420; *Ramos v City of New York*, 55 AD3d at 897).

The plaintiff's remaining contentions are either improperly raised for the first time on appeal or without merit.

DILLON, J.P., ROMAN, MALTESE and CHRISTOPHER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court