

<b>Peters v City of New York</b>
2015 NY Slip Op 32049(U)
January 22, 2015
Supreme Court, New York County
Docket Number: 101258/2010
Judge: Kathryn E. Freed
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

PRESENT: \_\_\_\_\_  
Justice

PART 5

Index Number : 101258/2010  
PETERS, LORETTA  
vs.  
CITY OF NEW YORK  
SEQUENCE NUMBER : 003  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 003

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):


**FILED**

FEB 03 2015

NEW YORK  
COUNTY CLERK'S OFFICE

**RECEIVED**  
FEB 02 2015  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT - CIVIL

Dated: 1-22-15  
JAN 22 2015

  
\_\_\_\_\_, J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

- 1. CHECK ONE: .....  CASE DISPOSED
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

NON-FINAL DISPOSITION

2

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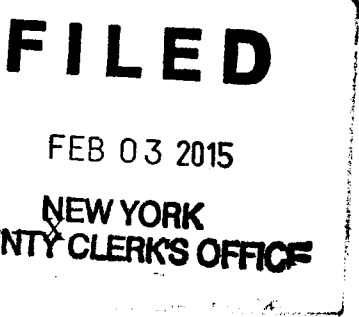
**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5**

-----X  
LORETTA PETERS.,

Plaintiff,  
-against-

Index No.104750/09  
**DECISION AND ORDER**  
Motion Sequence Nos 003, 004

THE CITY OF NEW YORK AND GRAND  
CENTRAL PARTNERSHIP, INC.,



Defendants.

-----  
Hon. Kathryn E. Freed, J.S.C.:

This is an action for injuries allegedly sustained by plaintiff when she was caused to fall by a defect in a public roadway while crossing the street. Defendants the City of New York (the City) (seq # 004) and Grand Central Partnership, Inc., (GCP) (seq # 003) move, pursuant to CPLR 3212, for an order granting them summary judgment dismissing the complaint and all cross claims against them. The motions are decided together.

***Factual and Procedural Background***

Plaintiff alleges that, on February 19, 2009 at 12:30 pm, she was injured while crossing the street as a result of tripping on a pothole in the roadway located “15 feet south from the traffic light pole located at the south-west corner of Lexington Avenue and East 54 th Street ... roughly in front of ... an establishment known as “Hale and Hearty Soups.” See Plaintiff’s notice of claim, annexed as Ex. A in the City’s Motion for Summary Judgment. According to the notice of claim, the City “allowed the [r]oadway to be depressed, raised, uneven, and improperly repaired. Id. At plaintiff’s

50-h hearing, she gave the following testimony regarding the defect in the roadway which allegedly caused her injury:

Q. In your own words, can you tell me how the accident occurred?

A. To the best of my recollection, the roadway, kind of being like uneven and yet like a hole, the roadway was like uneven and then kind of like a hole.

Q. How was it uneven?

Q. Was there a break somewhere in the concrete and there was a misleveling in the roadway or was there some other condition?

A. Due to the way it was, that it was like uneven, there was like a hole, so I guess then it would have been-well, the hole ...

The instant action was subsequently commenced by summons and complaint dated January 28, 2010 alleging negligence against the City and GCP in that these parties caused, created or substantially contributed to the defective road condition which led to her accident and injury. GCP joined issue upon service of its answer on February 24, 2010, and the City joined issue on February 25, 2010. In her bill of particulars, plaintiff alleged that GCP “negligently placed and left a number of plastic bags filled with refuse ... which bags inhibited pedestrian travel and created a path of travel that led directly to ... the roadway defect.” Defendants the City and GCP now move for summary judgment dismissing the complaint and all cross claims asserted against them. Plaintiff opposes the motions.

***The City’s Motion for Summary Judgment :***

The City argues that it is entitled to summary judgment dismissing the complaint due to plaintiff’s failure to comply with § 7-201(c)(2) of the Administrative Code of the City of New York (the Statute), which requires prior written notice of a defective condition. It argues that plaintiff’s

action falls within the scope of the Statute since the gravamen of her claim is that the City permitted the roadway 15 feet south from the traffic light pole located at the southwest corner of Lexington Avenue and East 54 th Street to remain in a defective condition.

Section 7-201(c)(2) of The New York City Administrative Code lists three alternative prerequisites to an action maintained against the City for an injury caused by, among other things, a roadway being “out of repair, unsafe, dangerous or obstructed.” The prerequisites are: (1) “written notice of the defective, unsafe, dangerous, or obstructed condition ... was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice”; (2) “where there was a previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency”; or (3) “there was written acknowledgment from the city of the defective, unsafe, dangerous or obstructed condition” and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe. *Id.*; *Leitner v 304 Associates LLC., Central Parking Systems of New York*, 2013 WL 3939777 (Sup Ct, New York County 2013); *Wittorf v The City of New York*, 2009 WL 2221460 (Sup Ct, New York County 2009).

A plaintiff must affirmatively plead and prove prior written notice of the specific condition by the City as a condition precedent to their action. *See Katz v City of New York*, 87 NY2d 241 (1995); *Poirer v City of Schenectady*, 85 NY3d 310, 313 (1995).

In order to establish its prima facie proof that it did not have written notice of the alleged defect, the City proffers the affidavit of Dmitry Surkov, an employee of the Department of Transportation of the City of New York (DOT) (Ex M). Surkov avers that he conducted a thorough

search of the City's records on 10/7/11, for a period of two years prior to the plaintiff's accident on February 19, 2009, including applications for permits, corrective action requests (CARs), notices of violation, inspection and maintenance records, contracts, repair orders, gang sheets for roadway work, milling resurfacing records and Big Apple Maps. According to Surkov, the search revealed 26 permits, 25 hard copy permits, 3 applications, 2 CARs, 1 notice of violation, 19 inspections and 1 maintenance and repair record (Ex G). The City submits the depositions of three DOT witnesses who testified as to the roadway search. The City annexes a copy of the Big Apple Map for the incident location and the Key to the Map Symbols provided to the City by the Big Apple Pothole & Sidewalk Protection Corporation received by DOT on October 23, 2003. This was the most recent map served upon the City prior to the date of plaintiff's alleged accident. The City maintains that none of the permits listed were issued to the City or an outside entity doing work. The City also submits a supplemental roadway search for records maintained by the DOT that was conducted on 1/30/13 for contract information and in-house resurfacing for a period of four years prior to the alleged incident. See affidavit of Sean Williams, Ex N. The City maintains that none of the records produced by the DOT searches amount to prior written notice of the defective roadway at issue.

The City also argues that it is entitled to summary judgment because it neither caused nor created the subject condition through an act of negligence. Additionally, asserts the City, it did not make special use of the roadway, and plaintiff failed to submit any evidence establishing that it did. It also argues that normal deterioration of the roadway over time is insufficient to establish affirmative negligence. The Court of Appeals has recognized only two exceptions to the prior written notice rule, i.e., "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). In order for the City to be liable under the “cause and create” exception to the Statute, the City’s affirmative negligence must “immediately result in the existence of a dangerous condition.” *Id.*

Plaintiff argues that the City created the condition through its negligent repair of the pothole by the southwest corner of 54<sup>th</sup> street and had written notice of the condition prior to the accident. Plaintiff asserts that the permit issued by the City to the Welsbach Electric Corporation (“Welsbach”) for the installation of traffic signals on Lexington Avenue between East 53<sup>rd</sup> Street and East 54<sup>th</sup> Street is sufficient to satisfy the written notice requirement. Plaintiff also argues that, even if the City lacked written notice, it caused or created the defect by permitting Welsbach to install traffic conduits in the roadway which were improperly repaired. Finally, plaintiff asserts that the City is vicariously liable for the negligent placement of trash bags on the sidewalk for its special use which, “under no circumstances, falls within the ambit of §7-201 of the New York City Administrative Code.” see Plaintiff’s Opp at ¶70.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by advancing sufficient “evidentiary proof in admissible form” to demonstrate the absence of any material issues of fact from the case. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *Id.* Thus, when a defendant is the proponent of a motion for summary judgment, it must establish that the “cause of action ... has no merit” (CPLR 3212[b]) sufficient to warrant the court as a matter of law to direct judgment in his or her favor. See *Bush v St. Clare’s Hosp.*, 82 NY2d 738,739 (1993). A party can prove its prima facie entitlement to summary judgment through the affirmation of its attorney based upon

documentary evidence. *See Prudential Securities Inc v Rovello*, 262 AD2d 172 (1st Dept 1999). Alternatively, to defeat a motion for summary judgment, the opposing party must show facts sufficient to require a trial of any issue of fact. *See* CPLR 3212(b). Thus, where the proponent of the motion makes a prima facie showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to either demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or tender an acceptable excuse for his or her failure to do so. *See Vermette v Kenworth Truck Co.* 68 NY2d 714, 717 (1986). Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist. The opponent “must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist.” *Silberstein, Awad & Miklos v Carson*, 304 AD2d 817, 818 (1<sup>st</sup> Dept 2003) and “the issue must be shown to be real, not feigned, since the sham or frivolous issue will not preclude summary relief.” *Kornfeld v NRX Technologies Inc.*, 93 AD2d 772 [1<sup>st</sup> Dept 1983], *aff’d* 62 NY2d 686 [1984]).

The City has met its prima facie burden. It is well settled that submission of Big Apple Maps prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc., and filed with the DOT, such as the one submitted by the City herein, can establish lack of prior written notice upon the City. *See Becker v City of New York*, 131 AD2d 413, 415 (2d Dept 1987). Moreover, a permit for street excavation, such as the Welsbach permit herein, without more, does not provide the requisite written notice to the City of a defect pursuant to the Statute. *See Lopez v Gonzalez*, 44 AD3d 1012 (2d Dept 2007); *see also Meltzer v City of New York*, 156 AD2d 124 (1989). Also, repair orders such as Plaintiff “FITS” reports reflecting that repairs have been made to the subject area (*see Marshall v City of New York*, 52 AD3d 586, 587 [2d Dept 2008]; *Khemraj v City of New York*, 37 AD3d 419,

420 [2d Dept 2007]), even if reduced to writing, which plaintiff does not submit, do not satisfy the Statute. Even where there is evidence that the City had prior written notice of a defective condition, liability for the condition is obviated upon evidence that the condition was repaired prior to plaintiff's accident. *See Lopez v Gonzalez*, 44 AD3d, *supra* at 1013. No additional evidence or affidavits were presented to satisfy plaintiff's burden of creating a triable issue as to notice. *See Becker v City of New York*, 131 AD2d, *supra* at 415.

Where the City establishes that it lacked prior written notice under the Statute, as the City has done herein, the burden then shifts to the injured party to demonstrate "the applicability of one of two recognized exceptions to the rule-that the municipality affirmatively created the defect through an act of negligence" such that it "immediately result[ed] in the existence of [the] dangerous condition" alleged or that "a special use resulted in a special benefit to the locality." *Yarborough v City of New York*, 10 NY3d, *supra* at 728 (internal quotation marks omitted); *Oboler v City of New York*, 8 NY3d 888, 890 (2007). Plaintiff does not submit any evidence or testimony that proves that Welsbach actually performed the work, that it was negligently performed or that it was negligently repaired. This showing cannot be made by conclusory allegations or speculation by plaintiff herein that the City somehow immediately created the roadway condition by negligent repair of the road after the Welsbach Electric excavation. *See Lawler v City of Yonkers*, 45 AD3d 813 (2d Dept 2007). As a result, plaintiff has failed to demonstrate a triable issue of fact as to the applicability of an exception to the notice requirement and therefore cannot withstand summary judgment. *Id.*

Finally, this Court rejects plaintiff's vicarious liability theories against the City regarding the allegedly defective sidewalk condition, asserted for the first time in opposition to this motion, as precluded by GML 50-e which requires that the notice of claim set forth the manner in which the

claim arose. *See Chipurnoi v Manhattan & Bronx Surface Transit Operating Auth.*, 216 AD2d 171 (1<sup>st</sup> Dept 1995). In any event, plaintiff's argument that the City made "special use" of the sidewalk is not applicable to the facts herein since the special use exception is reserved for situations concerning an "installation" on the sidewalk, and is inapplicable to transient conditions such as garbage bags. *See Poirer v City of Schenectady*, 85 NY2d 310, 315 (1995); *Balsam v Delma Eng. Corp.*, 139 AD2d 292 (1<sup>st</sup> Dept 1998). Finally, this Court rejects plaintiff's assertion that there may be a triable issue of fact as to whether the City was on constructive notice of the alleged sidewalk defect since constructive notice of a sidewalk defect is not an exception to the requirement of prior written notice. *See Quinn v City of New York*, 305 AD2d 570 (2d Dept 2003). Nor is actual notice an exception, unless such notice satisfies the Statute's requirements for a written acknowledgment, facts not alleged here. *See Amabile v City of Buffalo*, 93 NY2d 471(1999). For all of the above reasons, the City's motion for summary judgment dismissing the complaint pursuant to CPLR 3212 is granted.

#### ***GCP's Motion for Summary Judgment***

GCP provides services to the City pursuant to contract. As a Business Improvement District (BID), GCP's duties pursuant to the agreement included garbage removal. GCP moves for summary judgment dismissing the complaint and all cross claims asserted against it on the ground that the plaintiff cannot establish a case of negligence against it because there is no evidence that it had "special use" of the sidewalk or caused or contributed to the alleged defect or that plaintiff tripped or fell over the garbage bags. In her bill of particulars and later at her deposition, plaintiff maintained that her injuries were caused by the need to avoid the crosswalk at the intersection of Lexington

Avenue and 54<sup>th</sup> Street because she was confronted by “a lot of trash bags” and she “could not get access” to the sidewalk so she then “reared to the left to try to get onto the sidewalk to get lunch” and before reaching the sidewalk she tripped on a “big dip” or “hole” in the roadway which was 15 feet away from the bags, injuring her left ankle and left wrist. *See* Plaintiff’s testimony annexed to the motion Ex B at p 23-25, 30-32. GCP argues that, as a matter of law, plaintiff cannot establish that, by merely placing transient garbage bags on the sidewalk, it made a “special use” of the area which caused plaintiff’s injuries. GCP maintains that there is no evidence in the record that plaintiff tripped on the bags, that the bags were improperly placed in the area of the sidewalk or, more importantly, that the encroaching installation of bags on the sidewalk was located close enough to the defect in the roadway to direct plaintiff’s path.

Plaintiff opposes the motion on three grounds, arguing that GCP had a duty to plaintiff pursuant to the “special use doctrine,” that it created a danger to pedestrians, and that it exacerbated an existing danger. Plaintiff’s Aff in Opp, ¶4.

With the passage of §7-210 of the New York City Administrative Code, maintenance and repair of the public sidewalks and any liability for a failure to perform the same, was shifted, with certain exceptions, to owners whose properties abutted the sidewalk. *See Ortiz v City of New York*, 67 AD3d 21, 25 (1<sup>st</sup> Dept 2009), revd on other grounds 14 NY3d 779 (2009). The duty to repair and maintain the curb remains with the City. *See Weiskopf v City of New York*, 5AD3d 202 (1<sup>st</sup> Dept 2004).

In order to establish negligence, a plaintiff is required to prove “the existence of a duty, that is, a standard of reasonable conduct in relation to the risk of reasonably foreseeable harm; a breach of that duty and that such breach was a substantial cause of the resulting injury”. *Baptiste v New York City Tr. Auth.*, 28 AD3d 385, 386 (1<sup>st</sup> Dep’t 2006), citing *Palsgraf v Long Is. R.R. Co.*, 248 NY 339

(1928). A defendant owes no duty to keep a public thoroughfare in a safe condition unless the plaintiff can demonstrate that the defendant either (1) affirmatively created the defective condition that caused the accident, (2) negligently constructed or repaired the public thoroughfare, or (3) uses the public thoroughfare for a special purpose. *See Hausser v Guinta*, 88 NY 2d 449 (1996); *Weiskopf v City of New York*, 5 AD3d 202 (1<sup>st</sup> Dept 2004); *Granville v City of New York*, 211 AD2d 195 (1<sup>st</sup> Dept 1995). Thus, one prerequisite for the imposition of liability for a dangerous condition within or on real property, is a defendant's occupancy, ownership, control or special use of the premises. *See Balsam v Delma Eng. Corp.*, 139 AD2d, *supra* at 296-297 (1st Dept 1998).

The special use doctrine, relied upon by plaintiff, is a "narrow exception to the general rule [which] imposes an obligation on the abutting landowner, where he puts part of a public way to special use for his own benefit and the part is used subject to his control, to maintain the part so used in a reasonably safe condition to avoid injury to others." *Balsam*, 139 AD2d, *supra* at 298; *see Korie v 27 W 71<sup>st</sup> Street, LLC*, 2009 NY Slip Op 32649(U)(Sup Ct, New York County 2009) (erection of scaffolding over sidewalk not "special use" where plaintiff did not trip on scaffolding and record contained no evidence that scaffolding "encroached on the sidewalk where plaintiff tripped in such a manner that directed plaintiff to walk upon the alleged defective portion of the sidewalk"); *Montalbano v 136 W 80<sup>th</sup> St CP.*, 2010 NY Slip Op30483(U)(Sup Ct, New York County 2010) (no special use of sidewalk by abutting landowner found where plaintiff tripped over sidewalk defect since there was no evidence in record showing that landowner caused or contributed to the defect).

Other courts have inquired into the nature of a BID's use of sidewalks in order to determine whether the BID's use fell under the "special use" doctrine. In *Hyndryx v. City of New York*, 3 Misc.3d 512 (Sup Ct, New York County 2004), the Court held that merely making use of the sidewalk

for some specific reason “did not mean that the BID assumed a duty to maintain or repair the public sidewalk or roadway.” That Court additionally noted that “absent an express contractual assumption by the BID, the City was responsible for street repairs and maintenance.” *Id.*, at 513. Similarly, in *Sverdlin v. Gruber*, 289 A.D.2d 475 (2d Dept 2001), the court found that any obligations that a BID might have with respect to maintenance of the sidewalks was “not extensive nor exclusive but supplemental.” *Id.*, at 477.

Here, although the BID established as a matter of law that the placement of the transient garbage bags on the sidewalk did not constitute a “special use,” that does not end the Court’s inquiry. Since the BID failed to establish as a matter of law that it did not direct plaintiff toward the alleged hazard, a question of fact exists regarding its negligence which precludes the granting of summary judgment in its favor.

In *McKenzie v Columbus Centre LLC*, 40 AD3d 312 (1<sup>st</sup> Dept 2007) a pedestrian fell in a roadway depression located “under” a sidewalk protective shed “erected” at a demolition site from which the contractor derived a “special benefit.” The First Department denied the scaffold contractor’s motion for summary judgment on the ground that triable issues of fact existed as to whether it created an unsafe condition by erecting a protective sidewalk shed which directed plaintiff toward a roadway depression located underneath the shed. Here, as in *McKenzie*, a question of fact exists regarding whether the placement of the garbage bags by GCP directed plaintiff towards the unsafe condition in the roadway.

Similarly, in *Coulton v City of New York*, 29 AD3d 301 (1<sup>st</sup> Dept 2006), plaintiff slipped and fell on the sidewalk in front of a house being renovated by a contractor who built a plywood cover over the house which narrowed the width of the sidewalk. The First Department denied the defendant

contractor's motion for summary judgment on the ground that the contractor had "a duty not to create an unsafe condition when it narrowed the sidewalk by erecting the plywood cover around the building" being renovated "to the extent it may have increased the risk that pedestrians might trip" on the broken and uneven sidewalk. *Id.*, at 302.

In *Hunter v City of New York*, 23 AD3d 223, 224 (1st Dept 2005), where plaintiff tripped and fell on a sidewalk abutting a property being renovated, the First Department found that the plywood construction fence "erected" at the construction site encroached on the "adjacent sidewalk," limiting pedestrian passage to a portion of the sidewalk abutting a subway grating and may have proximately caused plaintiff harm by "directing plaintiff toward [the] alleged sidewalk defect."

Finally, the "negligence complained of must have caused the occurrence of the accident from which the injuries flow." *Lee v New York City Hous. Auth.*, 25 AD3d 214, 219 (1<sup>st</sup> Dept 2005). Proximate cause is ordinarily a question of fact unless the evidence conclusively establishes that there was an intervening act which does not flow from the original negligence, that was so extraordinary and far removed from defendant's conduct as to be unforeseeable. *See Derdarian v Felix Contracting Corp.*, 51 NY2d 308, 315 (1980). Here, the trier of fact must determine whether the garbage bags were negligently placed on the curb and, if so, that negligence directed plaintiff toward the alleged defect so as to have caused the alleged accident. *See Roimesher v Colgate Scaffolding & Equipment Corp.*, 77 AD3d 425 (1<sup>st</sup> Dept 2010); *Korie v 27 W 71<sup>st</sup> Street, LLC*, *supra*.

This Court notes that its role in deciding a summary judgment motion "is one of issue identification, not issue determination." *Ferrante v. American Lung Association*, 230 AD2d 685,686 (1st Dept 1996). Here, a material issue of fact exists as to whether the BID's placement of the trash bags caused or contributed in any way to plaintiff's injury, and it is up to the trier of fact to make that

determination.

In light of the foregoing, it is hereby:

ORDERED that the motion for summary judgment by the defendant City of New York is granted, the complaint and all cross claims asserted against the City are dismissed, and the action is severed against that defendant; and it is further,

ORDERED that the motion for summary judgment by the defendant Grand Central Partnership, Inc. is denied; and it is further,

ORDERED that the remainder of the action shall continue; and it is further,

ORDERED that the caption of the action shall now read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LORETTA PETERS,

Plaintiff,

-against-

GRAND CENTRAL PARTNERSHIP, INC.,

Defendant.

-----X

And it is further,

ORDERED that the aforementioned defendant Grand Central Partnership, Inc. shall serve a copy of this order, with notice of entry, upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the amended caption; and it is further,

ORDERED that defendants Grand Central Partnership, Inc and defendant The City of New York, shall each serve a copy of this order upon the plaintiff with notice of entry within 20 days of its entry; and it is further,

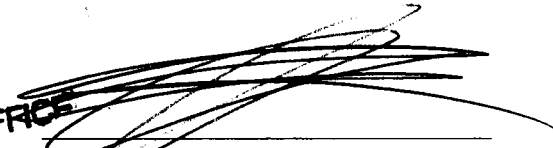
ORDERED that upon proof of service and notice of entry upon all parties, the Clerk of the Court is directed to enter judgment dismissing the complaint as to the City and the within matter shall be transferred to a non-City IAS Part; and it is further,

ORDERED that this constitutes the decision and order of the Court.

Dated: January 22, 2015

ENTER:

**FILED**  
FEB 03 2015  
NEW YORK  
COUNTY CLERK'S OFFICE

  
HON. KATHRYN FREED, J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT