

**Herman v Metropolitan Transp. Auth.**

2019 NY Slip Op 31936(U)

June 27, 2019

Supreme Court, New York County

Docket Number: 162475/2015

Judge: Lisa A. Sokoloff

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LISA ANN SOKOLOFF** PART IAS MOTION 21EFM

*Justice*

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INDEX NO. 162475/2015

ANTOINETTE HERMAN,

MOTION DATE 08/23/2018

Plaintiff,

MOTION SEQ. NO. 001, 002, & 003

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK  
CITY TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTION,  
THE CITY OF NEW YORK, THE HALCYON CONSTRUCTION  
CORP., CONSOLIDATED EDISON COMPANY OF NY,  
INC., EMPIRE CITY SUBWAY COMPANY LIMITED, VERIZON  
NEW YORK, INC.

**DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 74, 75, 76, 81, 82

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 68, 70, 71, 72, 73, 78, 79, 80, 83, 84, 85, 86

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

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

Plaintiff alleges that on December 17, 2014, between 1 and 1:30pm she tripped and fell in the intersection of Second Avenue and 58<sup>th</sup> Street in Manhattan due to a raised metal clip/steel tab that affixed two metal plates together in that roadway.

Four defendants move to be dismissed from the action as they did not cause or create the condition which is alleged to have facilitated plaintiff's accident, nor did they owe a duty to plaintiff which they breached. Motion sequence 001 was brought by the City. Sequence 002 by Empire City Subway [ECS] and Verizon. Motion sequence 003 was brought by the Transit Authority defendants.

Pierre Paul Rameau, Jr., the engineer in charge of the contract for work at the site at the City's Department of Design and Construction, testified that the underlying project at that site involved the replacement of a trunk water main and related gas line work which was performed by a joint venture between Con Ed and Halcyon (both defendants). Rameau identified Halcyon as the general contractor and indicated that it was responsible for its own means and methods.

Sal Leopold, an officer of Halcyon, noted that Halcyon was working at the subject intersection pursuant to contract MED 600B with the City. He admitted that Halcyon laid the plates in the roadway to cover open trenches as part of its MPT (maintenance and protection of traffic) under the contract. He confirmed that Halcyon owned the plates and secured the steel tabs which locked the plates together.

The evidence submitted established that the project was put on hold for a winter break shortly after Halcyon laid and secured the plates in the roadway. The Court examined the photographs and found that the majority of clips hold the plates together were fat; however, a pair that were located in the cross-walk were visibly raised and it appeared that there was a significant height differential.

In support of summary judgment, the City established that it received no notice of the allegedly defective condition. However, it could not establish that the metal clips changed position over time or whether the installation was defective, clearly raising a question of fact.

In support of their motion, Verizon and ECS established that they did not perform work in the area. Although they also contracted with Halcyon for interference work on their behalf in connection with the project, the subject plate was not placed in connection with their facilities.

Again, no party opposed dismissal of claims and cross-claims against these defendants<sup>1</sup>. The Court also grants their motions.

The Transit defendants established in support of their motion that they did not enter into the contracts for the work which allegedly caused the accident, nor did they have any facilities in the area. No party opposed their motion, which the Court grants.

ORDERED that the motion of the CITY of NEW YORK is denied; and it is further

ORDERED that the motions for summary judgment of defendants METROPOLITAN TRANSPORTAION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTIONN, EMPIRE CITY SUBWAY COMPANY AND VERIZON NEW YORK, INC. are granted and all claims and cross-claims are dismissed against them; and it is further

ORDERED that defendants METROPOLITAN TRANSPORTAION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTIONN, EMPIRE CITY SUBWAY COMPANY AND VERIZON NEW YORK, INC. are hereby removed from the caption of the action; it is further

ORDERED that counsel for one of the successful movants shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the dismissal of defendants METROPOLITAN TRANSPORTAION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTIONN, EMPIRE CITY SUBWAY COMPANY AND VERIZON NEW YORK, INC. from the action and its removal from the caption; and it is further

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<sup>1</sup> Halcyon did initially oppose granting Verizon and ECS's cross-claims for indemnity; however, their counsel clarified that Halcyon assumed the defense and indemnity of Verizon and ECS making the issue moot.

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptctmanh]); it is further

ORDERED that this matter shall be transferred to a CITY Part as there are no longer any Transit defendants in the case.

6/27/2019  
DATE

  
LISA ANN SOKOLOFF, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE