

**De Marranzini v City of New York**

2024 NY Slip Op 34068(U)

November 15, 2024

Supreme Court, New York County

Docket Number: Index No. 151468/2016

Judge: J. Mabelle Sweeting

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

**PRESENT: HON. J. MACHELLE SWEETING PART 62**

*Justice*

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FATIMA ARBAJE DE MARRANZINI AND CARLOS  
MARRANZINI, INDIVIDUALLY AND AS HUSBAND AND  
WIFE

Plaintiffs,

- v -

CITY OF NEW YORK, CON EDISON, VERIZON  
COMMUNICATIONS, INC., SCHIAVONE CONSTRUCTION  
CO., LLC, and JOHN P. PICONE, INC. D/B/A SCC-JPP  
JOINT VENTURE,

Defendants.

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**INDEX NO.** 151468/2016  
**MOTION DATE** 04/26/2024  
**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159

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

In this action, plaintiff, FATIMA ARBAJE DE MARRANZINI, alleges that on October 6, 2015, she sustained injuries when she tripped “while crossing the roadway in the crosswalk at the northwestern corner of 55th Street and Park Avenue” (NYSCEF Doc. No. 131 [Notice of Claim], ¶ 3). At the time, defendants Con Edison (“Con Ed”) and Verizon Communications, Inc. (“Verizon”) were doing work on the roadway at the southwest corner of the intersection (NYSCEF Doc. No. 132 [Complaint], ¶¶ 21-22). Plaintiff filed the note of issue on March 1, 2024 (NYSCEF Doc. No. 125).

Currently pending before the court is a motion by defendant City of New York (the “City”) seeking summary judgment in its favor (NYSCEF Doc. No. 126). The City argues that dismissal is warranted here, because plaintiff cannot establish, pursuant to Administrative Code § 7-201(c)(2), that the City had prior written notice of the alleged defect upon which this case is based.

The City notes that at her General Municipal Law § 50-h hearing (the 50-h Hearing), plaintiff stated that she fell on an “unlevel part from the metal plate, which it was dented . . . .” (NYSCEF Doc. No. 136 [50-h Transcript], p 23 lines 13-14). Plaintiff also filed an exhibit showing the place where she fell (NYSCEF Doc. No. 137). The City claims that in the course of this litigation, it conducted a thorough search of all projects performed in the area in question, from two years prior to the October 6, 2015, incident up to and including the date of the incident. The City found 155 permits issued in this area. According to the City, the searches also revealed one notice of violation, three inspections, three maintenance and repair orders or records, three complaints, three gangsheets concerning roadway defects, two records from the Office of Special Events, and four Big Apple Maps (NYSCEF Doc. No. 139 [Dubina Aff], ¶¶ 4-6).

The City argues that none of these documents provide prior written notice to the City. It cites *Bolanos v City of New York* (29 AD3d 455, 456 [1st Dept 2006]), among other cases, for the proposition that the permits did not provide prior written notice of the alleged condition. The inspections, the City contends, either related to different conditions or resulted in a final passing condition or unrelated notice of violation (*see* NYSCEF Doc. Nos. 138, 139). Other inspections related to work that was never performed, the failure to comply with a DOT permit, and unrelated problems such as a Verizon truck blocking the roadway and a street cave-in. Also, the City states that the maintenance and repair orders concerned potholes, and all pothole repairs were concluded successfully before the date of plaintiff’s accident (NYSCEF Doc. Nos. 141, 142). Finally, the

City states that the Big Apple Maps did not provide prior written notice because none of the available maps show the defect that allegedly caused the accident.

Absent notice, the City acknowledges that it has liability in cases in which its negligence caused or created the defective condition. However, in such cases the City must be affirmatively negligent; nonfeasance is insufficient. Here, the City again points to the documents at NYSCEF Doc. Nos. 138-142 in support of its position that it neither caused nor created the defect. More specifically, the City stresses that none of the work directly involved the City (NYSCEF Doc. No. 127, ¶¶ 55-57, citing, inter alia, *Yarborough v City of New York*, 10 NY3d 726, 728 [2008]).

In opposition, plaintiff states that the City had notice of the recurrent pothole problem, and that it “[c]learly . . . decided to put down black asphalt to top off the potholes and a plate over it until the road construction was finished” (NYSCEF Doc. No. 144, ¶ 19). Plaintiff points out that, according to her expert, the black asphalt and metal plate created a hazardous condition (*see* NYSCEF Doc. No. 149 [Expert Report]). Citing *Perrington v City of Mount Vernon* (37 AD3d 571, 572 [2d Dept 2007]), plaintiff suggests there is an issue of fact as to whether the City “affirmatively created the defect by either failing to place blacktop around the subject metal plate or negligently securing such metal plate with blacktop.” Plaintiff also states that it was the City that installed the metal plate, and therefore it had notice of the unevenness that caused plaintiff’s accident.

Plaintiff also argues that, contrary to the City’s position, it is unclear whether the City had specific, timely notice of the defect (citing *Massey v City of Cohoes*, 35 AD3d 996, 997 [3d Dept 2006] [Third Department case which states that “written notice that does not provide an exact location, but which nevertheless reasonable identifies the area of the purported defect, may give rise to a question of fact . . . as to the sufficiency of the notice”]). Plaintiff asserts that because the

City repaired defects at the subject intersection three times within the five months preceding plaintiff's accident, an issue of fact exists as to whether it noticed the defect at issue.

In reply, the City reaffirms that it had neither actual nor constructive notice of the defect. It argues that plaintiff submits no evidence showing that the City repaired the potholes by installing the metal plate and/or the asphalt, and it reiterates that the notices of conditions that are near but not in the specific area of the accident do not constitute notice of the defect in question.

According to the City, "it is unclear if the repaired potholes highlighted by Plaintiff are the same as that alleged to have caused his accident" and therefore plaintiff has not shown enough to establish notice (NYSCEF Doc. No. 157, ¶ 3). It contends that because it established its *prima facie* entitlement to summary judgment, the burden shifted to plaintiff to raise an issue of fact, but plaintiff did not satisfy her burden. Instead, the City argues that its records and the affidavits by Pasyukova and Hoque "conclusively show that the alleged condition did not exist due [to] the City causing or creating an immediately apparent hazardous condition" (*id.*, ¶ 6). It states that under *Yarborough* and other cases, the City is only liable if the work that it did immediately precedes the existence of the defective condition, and that here the City performed no work in such close temporal proximity to the accident. Instead, the last repair was completed on July 20, 2015, two months before plaintiff's accident. The City states that plaintiff's contention that the City placed the metal plate at the subject crosswalk is merely speculative, as plaintiff does not provide any evidence showing that the City performed such work. Instead, plaintiff relies solely on a repair record stating that the City witness did not know how the pothole was repaired.

The court grants the City's motion. The evidence that it submitted established "the City of New York had no prior written notice of the . . . condition of a metal plate on the roadway," and this shifted the burden to plaintiff to show that the City created the defect or made a special

use conferring a benefit on the locality (*Flynn v City of New York*, 154 AD3d 488, 488 [1st Dept 2017]). Here, plaintiff has not pointed to any evidence showing that the City had notice; instead, plaintiff merely speculates that the potholes in the area gave the City such notice.

Further, as the City contends, plaintiff’s speculation that in the course of repairing the potholes the City installed the metal plate and covered it with asphalt is insufficient to create an issue of fact, as plaintiff points to no evidence that the City performed such work or that any of the City’s work resulted in an immediate hazardous condition (*see Civic v City of New York*, 215 AD3d 445, 446 [1st Dept 2023]; *Correa v Mana Constr. Group Ltd.*, 192 AD3d 555, 555 [1st Dept 2021]). As plaintiffs have filed the note of issue, they implicitly acknowledge that no more evidence is forthcoming. Plaintiff’s reliance on *Massey* is misplaced, not only because it is an 18-year-old case from another Department, but because the written notice there still “reasonably identifie[d] the area of the purported defect” at issue in that case (*Massey*, 35 AD3d at 996). Here, on the other hand, the reports and maps the City submits do not raise an issue of notice regarding the purported defect – that is, of the metal plate.

Finally, although the above caption does not reflect this, plaintiff has discontinued her claims as against Verizon and Con Ed (*see* NYSCEF Doc. Nos. 151, 152). Accordingly, and pursuant to the November 17, 2022, order of this court (NYSCEF Doc. No. 144), the caption should read:

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FATIMA ARBAJE DE MARRANZINI  
and CARLOS MARRANZINI, Individually  
and as Husband and Wife,

Plaintiffs,

-against-

CITY OF NEW YORK, CON EDISON, SCHIAVONE  
CONSTRUCTION CO., LLC and JOHN P. PICONE,  
INC. d/b/a SCC-JPP JOINT VENTURE,


Defendants.

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Subsequently, by their January 2, 2024, stipulation, plaintiffs discontinued all claims against defendants John P. Picone, Inc. d/b/a SCC-JPP Joint Venture and Schiavone Construction Co., LLC. Pursuant to this stipulation, only the City of New York remained in the case. With this order, the court dismisses the only remaining defendant, which renders any further amendment of the caption moot.

Accordingly, and for the reasons set forth above, it is

**ORDERED** that the motion is **GRANTED** and the action is dismissed in its entirety.

11/15/2024 DATE			 J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE