

**Suarez v City of New York**

2024 NY Slip Op 34959(U)

December 30, 2024

Supreme Court, Bronx County

Docket Number: Index No. 26291/2020E

Judge: Elizabeth A. Taylor

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : PART IA2

-----X  
IRMA SUAREZ,

Index No. 26291/2020E

Plaintiff,

-against-

Hon. Elizabeth A. Taylor,  
Justice Supreme Court

THE CITY OF NEW YORK, JASMINE FIELDS, MEDINA  
BYARS, TARODD FIELDS, NANCY PEREZ, AND THE  
NANCY PEREZ TRUST AGREEMENT DATED JULY 27,  
2015,

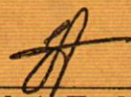
Defendants.  
-----X

The following papers numbered \_\_\_\_ to \_\_\_\_ were read on this motion (NYSCEF Seq. Nos. 2, 3, 4)

Sequence No. 2	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	70-97
Answering Affidavit and Exhibits, Memorandum of Law	98, 169-178
Reply Affidavit	114
Sequence No. 3	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	100-113
Sequence No. 4	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	115-133
Answering Affidavit and Exhibits, Memorandum of Law	162-165
Reply Affidavit	166, 168

Upon the foregoing papers, the foregoing motions are decided in accordance with the annexed decision and order.

Dated: DEC 30 2024

Hon.   
Elizabeth A. Taylor, J.S.C.

1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER

*[Handwritten red mark]*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : PART IA2

-----X

IRMA SUAREZ,

Plaintiff,

DECISION and ORDER  
Index No. 26291/2020E

-against-

THE CITY OF NEW YORK, JASMINE  
FIELDS, MEDINA BYARS, TARODD FIELDS,  
NANCY PEREZ, AND THE NANCY PEREZ  
TRUST AGREEMENT DATED JULY 27, 2015,

Defendants.

-----X

Elizabeth A. Taylor, J.

In Motion Sequence No. 2, plaintiff's moves for summary judgment pursuant to CPLR 3212, on the issue of liability against defendant The City of New York (hereinafter "City") and defendants Jasmine Fields, Medina Byars and Tarodd Fields (hereinafter "Fields" or "the Fields defendants"), and to strike the affirmative defenses as to comparative fault numbered 1, 4, 7, 8, 9, and 11 in defendant Fields' answer, and 8 and 9 in defendant City's answer.

In Motion Sequence No. 3, defendants Nancy Perez and The Nancy Perez Trust Agreement Dated July 27, 2015 (hereinafter, "Perez defendants") move for summary judgment dismissing the complaint and all crossclaims against them pursuant to CPLR 3212.

In Motion Sequence No. 4, the Fields defendants move for summary judgment

dismissing the complaint and all crossclaims against it pursuant to CPLR 3212.

### FACTS

This action arises out of an incident that occurred on December 4, 2019, when plaintiff Irma Suarez was allegedly caused to trip and fall due to a missing section of sidewalk and abrupt vertical edge abutting premises at 158 and 170 Newman Avenue in Bronx County. Plaintiff Irma Suarez was walking on the sidewalk of Newman Avenue when she approached the subject location abutting 170 and 158 Newman Avenue. Plaintiff was looking forward and it was "very dark." As Plaintiff crossed the subject location, her right foot "tripped on [the] cement where there was" "a hole." Plaintiff remarked that the subject location, where the sidewalk should have been, "was like grass," and that "the cement was ... like two inches higher than the grass." As Plaintiff tried to recover from her initial stumble, her left foot collided with the cement as well which caused her to "f[a]ll right on [her] hip."

Photographs submitted on the various motions depict a grassy area extending along the property at 158 Newman Avenue, which is owned by the Perez defendants. A pedestrian traversing Newton Avenue in the direction that plaintiff was proceeding would leave the sidewalk, walk along a grassy area just beyond a fence depicted at the end of the property at 158 Newman, and then step up to the sidewalk/driveway located at 170 Newman Avenue.

Jasmine Fields testified that she has resided at 170 Newman Avenue since 2002 when the defendants acquired the property. She is presently the only defendant residing at the property. She testified that the sidewalk was missing from the edge of the driveway at 170 Newman to the edge of the driveway at the next house located at 158 Newman. She confirmed that there is a driveway located at the location of the accident, but stated that it had not been used by her or the other defendants to bring cars onto the property. Moreover, another driveway was present on another adjoining street as the premises was located on a corner lot.

In 2003, A Certified Big Apple Map identified the subject location abutting 158 Newman Avenue and 170 Newman Avenue as having "No Sidewalk." The Certified Apple Map was submitted to defendant City and the requisite Departments. Further, in 2005, defendant City, through the Department of Parks and Recreation, completed an inspection and observed that there was "NO EXISTING SDWLK" at the subject location.

It is noted that the Court granted the motion of defendant City dismissing all claims and crossclaims against it on the ground that (Order. October 7, 2024, Danziger, J.).

#### ARGUMENT

Plaintiff argues that defendant Fields as homeowner of the property had actual notice of the missing sidewalk. Plaintiff concedes that under Section 7-210,

the non-City defendants fall within exceptions clearing them of their responsibilities under Section 7-210, as the administrative code does "not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes." Plaintiff nevertheless argues that the Fields defendants are liable as they made a special use of the sidewalk. In this regard, at 170 Newman Avenue, where the sidewalk resumed and created an abrupt vertical edge, a driveway existed for the "special benefit" of 170 Newman Avenue and the Fields defendants. Plaintiff maintains that plaintiff is not comparatively negligent as the incident occurred at night, and thus the hazardous condition was a trap to pedestrians due to the darkness and grass masking the abrupt vertical edge.

The Fields defendants argue that their special use of the property was not the proximate cause of the accident. Rather, they maintain that the accident was caused by the *absence* of a sidewalk, rather than any defect in the existing sidewalk. Further, the subject was never used as a driveway as the Defendants did own a vehicle or use the driveway as a driveway. Lastly, the Fields defendants argue that as to plaintiff's argument that the plaintiff is free from comparative fault, questions of fact exist.

Defendant City, which is no longer a party to this action, argued that the City did not have prior written notice of any defect in the sidewalk, and could not

where a sidewalk did not exist. The City further maintained that plaintiff failed to cite to any binding law that required the City to install a sidewalk at the location in question or that the lack of sidewalk qualifies as a defect.

The Perez defendants maintain that the accident occurred a few feet beyond their property line, where the edge of the driveway for 170 Newman Avenue is located. They maintain that as the location of the accident does not abut their property, as the dividing line and wall which ends at the very exterior of the Perez Property is not the area in which plaintiff claims this alleged accident occurred. The motion by the Perez defendants is unopposed.

#### DISCUSSION

A landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, including the likelihood of injury to third parties, the potential that any such injury would be of a serious nature and the burden of avoiding the risk. In order to recover damages, a party must establish that the owner created or had actual or constructive notice of the hazardous condition which precipitated the injury. (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969, 646 NE2d 795, 622 NYS2d 493 [1994].) "A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence" (*Smith v Costco Wholesale Corp.*, 50

AD3d 499, 500, 856 N.Y.S.2d 573 [1st Dept 2008]).

Summary judgment is appropriate where there are no material issues of fact. (Sillman v. Twentieth Century-Fox Film Corporation, 3 N.Y.2d 395, 404, 165 N.Y.S.2d 498 [1957]). Ultimately, summary judgment is designed to expedite all civil cases by eliminating from the trial calendar claims which can properly be resolved as a matter of law. “An unfounded reluctance to employ this remedy will only serve to swell the trial calendar and thus deny to other litigants the right to have their claims properly adjudicated.” (Andre v. Pomeroy, 35 N.Y.2d 361, 362 N.Y.S.2d 131 [1974]).

Where the moving party has established entitlement to summary judgment, the opposing parties must either demonstrate the existence of an existing material issue of fact requiring a trial or tender an acceptable excuse for failing to do so. (Zuckerman v. New York, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 [1980]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316 [1985].) Moreover, the adversaries’ evidence must be submitted in evidentiary form. (Id. See also Rubinfeld v. City of New York, 263 A.D.2d 448, 692 N.Y.S.2d 706 [2d Dep’t 1999] [holding that it is a function of the court and not the jury to determine whether a prima facie case of causation has been established]).

The Fields defendants argue that they cannot be found liable as the accident was caused by the absence of a sidewalk, and not a defect on the sidewalk.

However, the fact remains that the hole and the hazard presented by the vertical edge of the driveway was located on their property. A driveway constitutes a special use (see *Tedeschi v KMK Realty Corp.*, 8 AD3d 656, 780 NYS2d 150 [2d Dept. 2004]). “It is well settled that abutting landowners are liable for a defect in a public sidewalk only when the owners either created the defective condition or caused the defect to occur because of a special use, or when a statute or ordinance places an obligation on them to maintain the sidewalk and expressly makes them liable for injuries caused by breach of that duty.” (*Breger v. City of New York*, 297 A.D.2d 770, 771, 747 N.Y.S.2d 577, 578 [2d Dept. 2002].)

The Fields defendants argue that they did not actually use the driveway. However, the duty to maintain an area of "special use" under one's control runs with the land. (*Karr v City of New York*, 161 AD2d 449, 555 NYS2d 734 [1990]; *Torres v. City of New York*, 32 A.D.3d 347, 348, 820 N.Y.S.2d 268 [1st Dept. 2006]). Moreover, the gravamen of this action is that the Fields defendants derived a benefit from the existence of the driveway, but failed to make sure that the grassy area next to the driveway was free of holes or flush with the surrounding ground so as not to present a hazard to pedestrians. The Fields defendants failed to establish a prima facie case that they were free from negligence.

Plaintiff is not entitled to summary judgment. Whether or not the condition was dangerous raises issues of fact for the jury. Further, whether the plaintiff was

comparatively negligent also raises issues of fact.

Based upon the foregoing, it is hereby

ORDERED that Motion Sequence No. 3 is granted, and all claims and crossclaims against defendants Nancy Perez and The Nancy Perez Trust Agreement Dated July 27, 2015 are dismissed, and it is further

ORDERED that the Clerk is directed to enter judgment dismissing all claims and crossclaims against defendants Nancy Perez and The Nancy Perez Trust Agreement Dated July 27, 2015, and it is further

ORDERED that all other relief is denied.

This is the Decision and Order of the Court.

Dated: DEC 30 2024

ENTER:



Hon. Elizabeth A. Taylor, J.S.C.