

**Miriam Rodriguez v Group 103 LLC**

2025 NY Slip Op 30502(U)

February 10, 2025

Supreme Court, New York County

Docket Number: Index No. 156884/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M**

*Justice*

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MIRIAM RODRIGUEZ, AS ADMINISTRATRIX OF THE  
ESTATE OF ISAAC RODRIGUEZ, DECEASED,

Plaintiff,

INDEX NO. 156884/2021

MOTION DATE 07/22/2024

MOTION SEQ. NO. 002

- v -

GROUP 103 LLC, SASSOUNI MANAGEMENT,  
LLC, MADISON CHEMIST, INC.

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

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

Upon the foregoing documents, and after a final submission date of November 19, 2024, Defendants Group 103 LLC, Sassouni Management, LLC and Madison Chemist, Inc. (collectively “Defendants”) motion for summary judgment dismissing Plaintiff Miriam Rodriguez, as administratrix of the estate of Issac Rodriguez’s (“Plaintiff”) Complaint is denied.

On November 30, 2020, Isaac Rodriguez (“Decedent”) allegedly fell while walking on the sidewalk near 1408 Madison Avenue, New York, New York (the “Premises”). A passerby, Ms. Martha Herrera Marin (“Ms. Marin”) saw Decedent laying on the sidewalk in front of the Premises and called Decedent’s wife, Miriam Rodriguez. Mrs. Rodriguez, who was nearby parking the car, ran to the scene and found her husband sitting in front of the Premises, where he told her his leg “got stuck on the sidewalk.” Ms. Marin recalled Decedent telling her he “slipped.” The Premises were owned by Defendant Group 103 LLC, managed by Defendant Sassouni Management, LLC,

and leased by Defendant Madison Chemist, Inc. The Defendants now move for summary judgment dismissing Plaintiff's Complaint.

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Here, the Court is constrained to deny Defendants' motion as they have failed to meet their *prima facie* burden of showing, through admissible evidence, the absence of material issues of fact. As a preliminary matter, statements in medical records are not admissible where the records are not authenticated or certified, the cause of the injury is not germane to diagnosis or treatment, and where a movant fails to establish that a plaintiff who does not speak English was the source of the information recorded and that the information was accurately translated (*see Lourenco v City of New York*, 228 AD3d 577, 582 [1st Dept 2024] citing *Quispe v Lemle & Wolff, Inc.*, 266 AD2d 95, 96 [1st Dept 1999]). Here, Decedent's statements found in the uncertified medical records cannot be used to show entitlement to summary judgment as the accuracy of those statements has not been established.

Defendants' argument that Decedent's fall was caused by non-actionable rain is insufficient as there is no expert testimony from a meteorologist and the weather data relied on by Defendants is not certified (*see Ayala v City of New York*, 198 AD3d 407 [1st Dept 2021])

[uncertified weather reports are inadmissible and cannot be considered] citing *Morabito v 11 Park Place LLC*, 107 AD3d 472 [1st Dept 2013]). Although the certified records were submitted on reply, they still do not resolve the issue of whether Decedent slipped due to rain or tripped due to a sidewalk defect.

Nor is Ms. Marin's testimony sufficient to show entitlement to summary judgment as she admittedly did not witness Decedent's fall and her recollection of her conversation with Decedent does not definitively establish the cause of Decedent's fall. Moreover, and contrary to Defendants' arguments, Plaintiff Miriam Rodriguez's testimony raises an issue of fact precluding summary judgment. Evidence which may otherwise be excludable at trial under the Dead Man's Statute may be used to oppose a motion for summary judgment (*Rosado v Kusakdinun*, 32 AD3d 282, 284 [1st Dept 2006]). Although Defendants argue Plaintiff cannot rely on testimony excluded under the Dead Man's Statute alone to defeat summary judgment, Defendants ignore the other evidence relied upon – including Plaintiff's expert's testimony and photographs of defective conditions at the Premises. Indeed, according to Plaintiff's expert (NYSCEF Doc. 66), actionable defects in the sidewalk on Defendants' premises caused Plaintiff's accident, precluding summary judgment in favor of Defendants (*Shapiro v 89th Street Dev. Co. LLC*, 220 AD3d 499, 500 [1st Dept 2023]; *Davisdon v Shubert Organization, Inc.*, 221 AD3d 450, 451 [1st Dept 2023]). To the extent Defendants attack the credibility of Plaintiff's expert opinion, that is an issue for the jury (*Clindinin v New York City Hous. Auth.*, 117 AD3d 628 [1st Dept 2014]). Nor have Defendants eliminated issues of fact regarding notice of the alleged defect (*Powell v BLDG 874 Flatbush LLC*, 201 AD3d 534 [1st Dept 2022]).

Simply, viewing the facts in the light most favorable to the non-movant, Defendants have not met their burden of tendering sufficient evidence to show the absence of any material issues of

fact (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). As Defendants have failed to meet this heavy burden, their motion for summary judgment is denied.

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's Complaint is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>2/10/2025</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" 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