SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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CHEVON SHERROD,

Plaintiff,

- v -

FAIRFIELD INDUSTRIES, INC, THE NEW YORK CITY HOUSING AUTHORITY, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC, THE CITY OF NEW YORK

Defendant.

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INDEX NO. 159096/2021

MOTION DATE 02/20/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

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

Upon the foregoing documents, the motion filed by defendant Fairfield Industries, Inc. ("Fairfield") pursuant to CPLR § 3212 seeking an order of summary judgment dismissing the complaint and cross-claims against it is granted.

BACKGROUND

Plaintiff Chevon Sherrod ("Plaintiff") filed this personal injury action to recover damages for injuries she purportedly sustained when she stepped onto a manhole on a sidewalk located at or in front of 405 East 92nd Street, New York, New York (NYSCEF Doc No. 1, complaint ¶ 36). Plaintiff testified that the incident occurred on July 4, 2020 at around 11:30 p.m. (NYSCEF Doc No. 75, tr at 21). She left a relative's home and walked to her car with her aunt, her pastor astor, and her toddler daughter (*id*. at 21, 23). Her car was parked on 92nd Street between 1st Avenue and York Avenue in Manhattan, with the driver's side of the vehicle abutting the street (*id*. at 21, 35). Her daughter climbed into the car on the passenger's side (*id*. at 29). Plaintiff closed the car door and started to go around the car to the driver's side to strap her daughter into her car seat (*id*. at 29-31). As she stepped over and to the right, she stepped onto a manhole in the sidewalk (*id*. at 31, 33-34). Plaintiff testified that the manhole cover was unleveled, which caused her to fall into the manhole (*id*. at 34, ln 11-12). There was water in the manhole and Plaintiff's foot was submerged to the ankle (*id*. at 34-35). Her body twisted and she fell on the sidewalk (*id.* at 36). Plaintiff testified that the fall caused her to sustain injuries to both of her ankles, feet, left elbow, wrist, ring finger, head, back, and hips (*id*. at 15-16).

Plaintiff timely filed a notice of claim and commenced this proceeding by filing a summons and complaint on October 5, 2021 (NYSCEF Doc No. 1, complaint). The complaint interposes causes of action for negligence against Fairfield, the New York City Housing Authority ("NYCHA"), Consolidated Edison Company of New York, Inc. ("Con Edison"), and the City of New York (the "City") (NYSCEF Doc No. 1, complaint). NYCHA, Con Edison, and the City all filed timely answers to the complaint (NYSCEF Doc Nos. 2, 8, 9). On December 5, 2022, Plaintiff filed a motion for entry of a default judgment against Fairfield (NYSCEF Doc No. 25, notice of motion). The motion was granted by decision and order dated February 27, 2023, but the parties later entered into a stipulation to vacate the default and extend time for Fairfield to answer, appear, or otherwise move for relief (NYSCEF Doc No. 40, stipulation). On May 9, 2023, Fairfield filed an answer with cross-claims against NYCHA, Con Edison, and the City (NYSCEF Doc No. 41, answer).

Fairfield now moves pursuant to CPLR § 3212 for summary judgment to dismiss the complaint and all cross-claims as against it (NYSCEF Doc No. 74, notice of motion). In support of its motion, Fairfield submits, *inter alia*, an affirmation of its owner and president, Daniel Clover ("Clover") (NYSCEF Doc No. 89). Clover attests that Fairfield is a manufacturer of steel containers, including manhole covers and spill boxes (*id*. ¶ 2). Fairfield sells manhole covers that it manufactures through independent vendors, who then order the products they want from Fairfield and then sell them to their own customers (*id*. ¶ 3). Fairfield does not do any direct sales of manhole covers to customers, nor does it install, replace, repair or maintain any manhole covers (*id*. ¶¶ 3-4). Clover attests that he reviewed photos of the manhole on which Plaintiff stepped and cannot confirm whether Fairfield manufactured the manhole cover, but confirms that it is a standard manhole cover of the type that Fairfield manufactures (*id*. ¶ 5). Based on this information, Fairfield argues that it does not owe a duty to Plaintiff as a matter of law, and, therefore, she cannot maintain an action against it. The City opposes the motion and argues that questions of fact regarding the cause of the defect preclude summary judgment. No other party opposes the motion.

ARGUMENT

A motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman,* 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [internal quotation marks and citation omitted]). Upon a proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin,* 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]).

To maintain a cause of action in negligence, a plaintiff must first demonstrate a duty owed by the defendant to the plaintiff predicated upon "occupancy, ownership, control or a special use of such premises" (*Balsam v Delma Eng'g Corp.*, 139 AD2d 292, 296 [1st Dept 1988]). Alternatively, a duty may be imposed (1) where a defendant contractor creates or exacerbates a harmful condition in the execution of its contract, (2) where the plaintiff has suffered injury as a result of reasonable reliance upon the defendant's continuing performance of a contractual obligation, or (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely (*Church ex rel. Smith v Callanan Indus., Inc.*, 99 NY2d 104, 111 [2002]). "In the absence of a duty, as a matter of law, there can be no liability" (*Pasternack v Lab's Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]).

Fairfield has satisfied its burden on the motion by demonstrating that it does not own, operate, or control the property where Plaintiff fell, nor did it install, replace, repair, or maintain the manhole cover in question (NYSCEF Doc No. 89, Clover aff ¶¶ 2-5). Plaintiff's complaint does not contain any allegations that Fairfield negligently manufactured the manhole cover, and the complaint does not interpose a cause of action for products liability (NYSCEF Doc No. 1, complaint). Plaintiff testified at her deposition that the manhole was unleveled, which caused her to fall into it (*id*. at 34, ln 11-12). Whereas Fairfield did not install the manhole cover, it had no control over whether the manhole cover was leveled correctly. In the absence of any allegation or evidence that a manufacturing defect caused Plaintiff's injury, the City's argument that Fairfield could have manufactured the manhole cover and that an unknown manufacturing defect could have caused the manhole cover to fail is too tenuous to create a question of material fact for trial.

Accordingly, it is

ORDERED that the

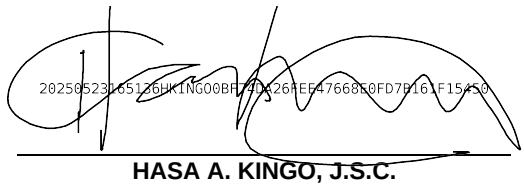
ORDERED that the motions for summary judgment of defendant Fairfield Industries, Inc. is granted, and the complaint is dismissed against them; and it is further

ORDERED that all crossclaims and counterclaims interposed against defendant Fairfield Industries, Inc. are dismissed; and it is further

ORDERED that all claims and crossclaims against defendant Fairfield Industries, Inc. are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Fairfield Industries, Inc. dismissing the claims and cross-claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the order and decision of the court.



5/23/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE