

Zhi Jin Cui v H&C Food Inc.

2025 NY Slip Op 32411(U)

May 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 527040/2019

Judge: Patria Frias-Colón

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 25
HON. PATRIA FRIAS-COLÓN, J.S.C.

-----X
Zhi Jin Cui,

PLAINTIFF,

-against-

H&C Food Inc., DZH Real Estate LLC and the City
of New York,

DEFENDANTS.
-----X

Index # 527040/2019
Cal. #s 14-15 Mot. Seq. #s 10-11

DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and/or 3212(b) of papers considered on review of this motion:
NYSCEF Doc #s 172-186; 206-218 by Def. H&C
NYSCEF Doc #s 187-202; 243 by Def. City
NYSCEF Doc #s 219-242 by Plaintiff

Upon the foregoing cited papers and after hearing oral argument on December 11, 2024, pursuant to CPLR § 3212, the Decision and Order on Defendant H&C Food Inc.’s (“H&C”) Motion for Summary Judgment and dismissing the complaint and any crossclaims and awarding summary judgment on its contribution and common-law indemnity claims against the City (Mot. Seq. # 10) and Defendant City of New York’s (“City”) Motion for Summary Judgment and dismissing Plaintiff’s complaint and any crossclaims (Mot. Seq. # 11) are both **DENIED** for the reasons set forth below.

BACKGROUND

Plaintiff commenced this personal injury action by filing a Summons and Complaint on or about December 12, 2019,¹ seeking damages for personal injuries allegedly sustained on April 26, 2019, in Brooklyn, New York.² Plaintiff claims to have tripped and fallen due to a metal object protruding from the sidewalk.³

Defendant H&C moved for summary judgment on September 3, 2024,⁴ asserting it had no duty to maintain the alleged defect, which it contends was a remnant of a City-owned signpost. H&C also seeks summary judgment on its common-law indemnification and contribution claims against the City, contending the City bears sole responsibility.⁵

Plaintiff opposed H&C’s motion, arguing that under Administrative Code § 7-210, H&C may be liable due to the lease between H&C and co-defendant DZH Real Estate LLC, which Plaintiff claims transferred maintenance responsibility to H&C.⁶ Plaintiff also contends there are triable issues of fact as to whether the metal object was installed or negligently maintained by the

¹ NYSCEF Doc. # 174.

² *Id.* at pp. 6-7.

³ NYSCEF Doc. # 178 at p. 35.

⁴ NYSCEF Doc. # 172.

⁵ *Id.* at pp. 6-7.

⁶ NYSCEF Doc. # 219 at pp. 8-9.

City.⁷

The City moved for summary judgment on September 27, 2024,⁸ asserting that liability for sidewalk maintenance under Administrative Code § 7-210 lies with the abutting property owner.⁹ The City also claims it lacked prior written notice of the alleged defect as required by Administrative Code § 7-201(c), and thus cannot be held liable.¹⁰

In opposition, H&C contends the City retains responsibility for maintaining traffic signs and posts and triable issues of fact exist regarding the City's involvement and notice.¹¹ Plaintiff also argues that the City had prior written notice of the defect via a 2003 "Big Apple Map," or alternatively, that the City affirmatively created the defect through its own negligent acts.¹² or, in the alternative, that there are triable issues of fact as to whether the signpost stump was affirmatively created by the City's negligence.¹³

In reply, the City argues that no admissible evidence demonstrates it created the defect¹⁴ and that the Big Apple Map does not denote any defect at the subject location.¹⁵

DISCUSSION

Standard for Summary Judgment

A party seeking summary judgment bears the burden of making a *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence establishing the absence of material issues of fact. *See* CPLR § 3212(b); *Alvarez v Prospect Hospital*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v City of New York*, 49 N.Y.2d 557, 562 (1980). Failure to meet this burden requires denial of the motion regardless of the strength of the opposition. *See Alvarez*, 68 N.Y.2d at 324; *Winegrad v New York University Medical Center*, 64 N.Y.2d 851, 853 (1985).

If the moving party meets its burden, the opposing party must submit evidence in admissible form demonstrating the existence of triable issues of fact. *Id.* The evidence must be viewed in the light most favorable to the non-moving party. *Fortune v Raritan Bldg. Servs. Corp.*, 175 A.D.3d 469, 470 (2d Dept. 2019). *See also CPLR 3212; Alvarez*, 68 N.Y.2d at 324; *Zuckerman*, 49 N.Y.2d at 562. "[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment." *Banco Popular North America v Victory Taxi Management, Inc.*, 1 N.Y.3d 381, 383 (2004) (internal quotations omitted). The court must view the totality of evidence presented in the light most favorable to the non-moving party and accord that party the benefit of every favorable inference. *See Fortune v Raritan Building Services Corp.*,

⁷ *Id.* at pp. 10-13.

⁸ NYSCEF Doc. # 187.

⁹ *Id.* at pp. 4-8.

¹⁰ *Id.* at pp. 8-16.

¹¹ NYSCEF Doc. # 206 at pp. 6-12.

¹² NYSCEF Doc. # 231 at pp. 7-8.

¹³ *Id.* at pp. 8-11.

¹⁴ NYSCEF Doc. # 243 at pp. 1 & 3.

¹⁵ *Id.* at pp. 2-3.

175 A.D.3d 469, 470 (2d Dept. 2019); *Emigrant Bank v Drimmer*, 171 A.D.3d 1132, 1134 (2d Dept. 2019).

Defendant H&C's Summary Judgment Motion (Motion Sequence 10)

Pursuant to Administrative Code § 7-210, abutting property owners (not the City) are generally liable for injuries resulting from unsafe sidewalk conditions. However, this statute must be strictly construed. *Jin v. Cheung's Holding Corp.*, 231 A.D.3d 821 (2d Dept. 2024). It does not extend to defects caused by City infrastructure such as traffic signposts. *Smith v 125th St. Gateway Ventures, LLC*, 75 A.D.3d 425 (1st Dept. 2010).

H&C claims the defect was a City-owned signpost stump.¹⁶ However, the Court finds that H&C failed to establish, as a matter of law, that the subject defect was a remnant of a City signpost or that H&C had no duty to maintain the sidewalk. Unlike the facts in *Smith* (supra) and *King v Alltom Props., Inc.*, 847 N.Y.S.2d 902 (Sup. Ct. Kings Cty. 2007), the record here does not unequivocally establish the nature or origin of the defect.¹⁷

Defendant H&C concedes that, as tenant to the premises and pursuant to its lease agreement with Defendant DZH, it was responsible for making general sidewalk repairs.¹⁸ In support of its motion, Defendant H&C submitted the Plaintiff's deposition testimony,¹⁹ Defendant DZH's deposition testimony,²⁰ Defendant H&C's deposition testimony,²¹ deposition testimony of Stacey Williams, records searcher and testifier for Defendant City,²² deposition testimony of Steven Stathoudakis, highway transportation specialist for Defendant City,²³ and the lease agreement between Defendant H&C and Defendant DZH.²⁴

Because H&C failed to meet its initial burden, the Court need not consider Plaintiff's opposition. *Winegrad*, 64 N.Y.2d at 853. Accordingly, H&C's motion is denied in its entirety.

Defendant City's Summary Judgment Motion (Motion Sequence 11)

Pursuant to Administrative Code § 7-201(c), prior written notice of a defect is a condition precedent to liability against the City. *Kolenda v. Inc. Vill. of Garden City*, 215 A.D.3d 647 (2d Dept. 2023). The burden shifts to the plaintiff to raise a triable issue as to either prior written notice or the City's affirmative creation of the defect. *Id.*; *Masotto v. Vill. of Lindenhurst*, 100 A.D.3d 718 (2d Dept. 2012).

¹⁶ NYSCEF Doc. # 173 at pp. 8-15.

¹⁷ See *King*, 847 N.Y.S.2d at *2 (“there is no genuine dispute that the metal protruding from the sidewalk is the remains of a City signpost. In fact, after Plaintiff's accident it appears that the City fixed it”).

¹⁸ *Id.* at p. 6.

¹⁹ NYSCEF Doc. # 178.

²⁰ NYSCEF Doc. # 180.

²¹ NYSCEF Doc. # 181.

²² NYSCEF Doc. # 179.

²³ NYSCEF Doc. #s 182 & 183.

²⁴ NYSCEF Doc. # 184.

The City established it lacked prior written notice, supported by records²⁵ and the affirmation of searcher Tatiana Pavlova²⁶. However, Plaintiff and H&C have raised triable issues regarding whether the City affirmatively created the defect. Notably, the 2014 DOT repair order²⁷ and the deposition testimony of Steven Stathoudakis²⁸ suggest City work may have been performed in the immediate area, creating a factual question as to causation. *See Rosa v City of New York*, 215 A.D.3d 707 (2d Dept. 2023); *Martin v City of New York*, 191 A.D.3d 152 (1st Dept. 2020).

Accordingly, the City's motion is denied in its entirety.

CONCLUSION

For the foregoing reasons, Defendant H&C Food Inc.'s motion for summary judgment (Motion Seq. No. 10) is denied in its entirety. Defendant City of New York's motion for summary judgment (Motion Seq. No. 11) is denied in its entirety. All relief not expressly addressed herein is denied.

This constitutes the Decision and Order of the Court.

Date: May 30, 2025
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.

²⁵ NYSCEF Doc. # 192.

²⁶ NYSCEF Doc. # 197.

²⁷ NYSCEF Doc. # 202.

²⁸ NYSCEF Doc. #s 194 & 195.