

**Coggins v Baymen Indus. Ltd.**

2025 NY Slip Op 32509(U)

July 14, 2025

Supreme Court, New York County

Docket Number: Index No. 150567/2023

Judge: Carol Sharpe

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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. CAROL SHARPE PART 52M**

*Justice*

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MARK BOYD COGGINS,

Plaintiff,

- v -

BAYMEN INDUSTRIES LTD., RCN TELECOM SERVICES  
(LEHIGH) LLC, WELSBACH ELECTRIC CORP.,  
CONSOLIDATED EDISON COMPANY OF NEW YORK,  
INC., THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION, NEW YORK CITY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Defendant.

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INDEX NO. 150567/2023

MOTION DATE 10/18/2024,  
12/26/2024

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 68

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 69

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents, Motion Sequences 1 and 2 are decided as follows:

Defendants Welsbach Electric Corp. (“Welsbach”) (Motion Seq. 1), and RCN Telecom Services of New York, LP i/s/h/a RCN Telecom Services (Lehigh) LLC (“RCN”) (Motion Seq. 2) each filed a motion seeking an order granting summary judgment pursuant to CPLR 3212 and dismissing any cross-claims against them on the grounds that they did not cause or created the condition that caused plaintiff’s injuries. No written opposition was filed. Welsbach’s motion is granted, and RCN’s motion is granted.

Plaintiff commenced this action by filing a summons and complaint alleging that on October 21, 2021, at approximately 2:00am, while riding his electric scooter southbound on 5<sup>th</sup> Avenue at the intersection of West 139<sup>th</sup> Street in New York County (“subject roadway”), he struck

a defect and fell causing injury. Issue was joined upon the filing of the answers by The City of New York (“The City”) and on behalf of New York City Department of Environmental Protection (“NYCDEP”), New York City Department of Transportation (“NYCDOT”) (collectively “Municipal Defendants”) on May 25, 2023. Municipal Defendants’ answer included crossclaims against Baymen Industries LTD (“Baymen”), Welsbach, RCN, and Consolidated Edison Company of New York, Inc. (“Con Edison”). Welsbach filed its answer August 1, 2023, with crossclaims against Baymen, RCN, and Con Edison. Con Edison filed its answer on August 23, 2023, with crossclaims against Baymen, RCN, Welsbach, and Municipal Defendants. RCN filed its answer on August 30, 2023, with crossclaims against Baymen, Welsbach, Con Edison, and Municipal Defendants.

In support of its motion, Welsbach submitted, among other things, a diagram of the location of the work performed by Welsbach; photographs exchanged by plaintiff showing a defect in the subject roadway; a Google map of the subject roadway; and an affidavit of Scot Placanica, a project manager employed by Welsbach since 1995 who stated that Welsbach worked at the intersection of 5<sup>th</sup> Avenue and West 141<sup>st</sup> Street to install underground electrical conduits and pole foundations, but did not perform any work at the subject roadway.

In support of its motion, RCN submitted, among other things, an affirmation of Brian Crombie, a Senior Construction Manager employed by RCN since 1999, who stated that RCN conducted its work on the subject roadway on November 29<sup>th</sup> and 30<sup>th</sup> of 2021, and on December 8<sup>th</sup> and 10<sup>th</sup> of 2021. Along with his Affirmation, Mr. Crombie submitted a diagram showing where RCN’s assets are in the general area, along with a NYCDOT Street Opening Permit issued to RCN on November 1, 2021, for work to be performed by RCN on the subject roadway from November 1, 2021, to November 30, 2021.

“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 A.D.3d 303, 306, 833 N.Y.S.2d 89 (1<sup>st</sup> Dept. 2007), citing *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 (1985). “Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers.” *Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986). If the proponent makes the required *prima facie* showing, the burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial. CPLR §3212(b); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124, 733 N.E.2d 203, 711 N.Y.S.2d 131 (2000).

“It is well established that summary judgment may not be granted whenever the pleadings raise clear, well-defined and genuine issues.” *Falk v. Goodman*, 7 N.Y.2d 87, 89, 163 N.E.2d 871, 195 N.Y.S.2d 645 (1959). Upon a motion for summary judgment, the role of the court is issue finding, not issue determination. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240, 942 N.Y.S.2d 13 (2012); *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404, 144 N.E.2d 387, 165 N.Y.S.2d 498 (1957); *Esteve v. Abad*, 271 A.D. 725, 727, 68 N.Y.S.2d 322 (1<sup>st</sup> Dept. 1947). The motion should be denied where different conclusions can reasonably be drawn from the evidence. *Sommer v. Federal Signal Corp.*, 79 N.Y.2d 540, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992). All of the evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party’s favor. *Udoh v. Inwood Gardens, Inc.*, 70 A.D.3d 563, 897 N.Y.S.2d 12 (1<sup>st</sup> Dept. 2010). Issues of credibility are



YORK, NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION, NEW YORK CITY DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Defendants.

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; it is further

**ORDERED**, that counsel for plaintiff shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court within twenty (20) days of the date of this Order, and shall file proof of said service, and the Clerk of the Court is directed to mark the court’s records to reflect the change in the caption herein; and it is further

**ORDERED**, that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the Decision and Order of the Court.

ENTER:

July 14, 2025  
DATE

  
HON. CAROL SHARPE, J.S.C.

**HON. CAROL SHARPE  
J.S.C.**

|                       |                                     |                            |                                     |                       |                          |                 |
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| CHECK ONE:            | <input type="checkbox"/>            | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER           |
|                       | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/>            | DENIED                | <input type="checkbox"/> | GRANTED IN PART |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER               | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE       |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN |                                     |                       |                          |                 |