SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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CARMEN M. RIOS,

Plaintiff,

- v -

CITY OF NEW YORK, LOWER EAST SIDE I ASSOC. LP, CDC MANAGEMENT CORPORATION,

Defendant.

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INDEX NO. 153910/2018

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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

were read on this motion for SUMMARY JUDGMENT.

The City of New York ("the City") moves, pursuant to CPLR § 3212, for summary judgment dismissing Plaintiff's complaint on the grounds that the City neither had prior written notice of the subject sidewalk defect under Administrative Code § 7-201(c)(2), nor affirmatively created the condition that caused Plaintiff's fall. Plaintiff opposes, arguing both that the condition is attributable to the City's affirmative negligence, and that the 2008 Big Apple Map provides sufficient prior written notice to defeat summary judgment.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Carmen Rios alleges that on May 30, 2017, at approximately 1:30 a.m., she tripped and fell on an uneven metal curb near 355 East 10th Street, suffering personal injuries. A Notice of Claim was served on July 19, 2017. The action was commenced in April 2018, and issue was joined the following month. Plaintiff was deposed at a 50-h hearing and EBT. The City filed the instant motion following extensive DOT and Parks records searches and after Plaintiff filed a Note of Issue in January 2025.

ARGUMENTS

The City contends it is entitled to summary judgment because: (1) it lacked prior written notice of the condition as required by Administrative Code § 7-201(c)(2); (2) none of the DOT records—including 56 permits, 166 inspections, 20 complaints, and Big Apple Maps—identify the specific condition; (3) no exception to the prior written notice rule applies because the City did not affirmatively create the defect; and (4) its DOT and Parks records show no evidence of any negligent construction at the subject location.

Plaintiff responds that: (1) the defect—an uneven elevation between metal curb segments—is inherently one of faulty installation; (2) Google Earth photos from 2007 confirm the condition existed long before the 2015–2017 records examined by the City; (3) the 2008 Big Apple Map symbol ("circled X") represents the very obstruction she encountered; and (4) a 2013 City-led tree well reconstruction project altered the sidewalk and exacerbated the dangerous condition.

DISCUSSION

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 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]).

I. Prior Written Notice

The threshold issue is whether the City received prior written notice of the alleged defect. Administrative Code § 7-201(c)(2) provides that a civil action may not be maintained against the City arising from a dangerous sidewalk or curb condition unless the City received prior written notice of the specific defect or created it through an act of affirmative negligence (*see Katz v. City of New York*, 87 NY2d 241 [1995]; *Barry v. Niagara Frontier Tr. Sys.*, 35 NY2d 629 [1974]).

The City's unrefuted DOT and Parks searches – encompassing permits, corrective-action requests, notices of violation, inspections, complaints, and Big Apple Maps for the two years preceding the accident – disclose no such notice at the precise location where Plaintiff fell. Likewise, none of the twenty complaints or seven corrective-action requests in the DOT records pertain to a curb defect in front of 355 East 10th Street, and the lone Parks "Pruning Records" and "Work Orders" are unrelated to sidewalk or curb conditions.

Although Plaintiff points to a circled "X" symbol appearing on the 2008 Big Apple Map in an attempt to raise an issue of fact as to prior written notice, the City's reply and statements at oral argument on July 29, 2025 persuasively underscore that the Big Apple Map does not show a marking of any defect at the alleged accident location, 355 East 10th Street. The marking pointed out by Plaintiff in the vicinity of the accident location is at a different location on the block and cannot provide the City with prior written notice of this specific defect. Plaintiff argues that the court should "defer to the jury on the fact-sensitive questions arising from the Big Apple Map" but

the Big Apple Map record produced in this case clearly shows no marking of any defect in front of the accident location at 355 West 10th Street. Plaintiff points to a marking for an "obstruction protruding from sidewalk" at 351-353 West 10th street. This marking for an obstruction does not give the City notice of a broken curb at 355 West 10th Street (*see D'Onofrio v. City of New York*, 11 NY3d 581, 589–90 [2008]). Indeed, the circled "X," signifying "obstruction protruding from sidewalk," is distinct from the "X" symbol for curb-side height differentials and, in any event, does not correspond to the precise site of Plaintiff's trip. Without proof that the City was alerted to the particular defect at that exact point, Plaintiff fails to satisfy the statutory notice requirement. Indeed, the prior written notice statute is strictly construed, and Plaintiff's fallback on generalized sidewalk-level markings cannot circumvent the absence of specific, contemporaneous written notice.

II. Affirmative Negligence Exception

Even absent written notice, the "affirmative negligence" exception applies only where a municipality's own work "immediately results in" a dangerous condition (*Yarborough v. City of New York*, 10 NY3d 726, 728 [2008] *quoting Oboler v. City of New York*, 8 NY3d 888, 889 [2007]). Here, the City's 2013 Parks Department work involved standard tree-well expansion and sidewalk repaving that, as the City's proof demonstrates, complied with applicable DOT and Parks standards. The mere fact that the subsequent sidewalk grade differs from the adjacent metal curb segments does not establish that the City "caused or created" the trip hazard. Absent any evidence that the City's contractors installed the curb joint improperly or that the tree-well work manifested an emergent defect, Plaintiff cannot invoke the affirmative negligence exception. The City's reply papers further underscore that the 2007 and 2011 Google Street View images demonstrate the uneven metal curb slabs pre-dated any City-performed sidewalk work, negating any inference that the City's later activities created the hazard.

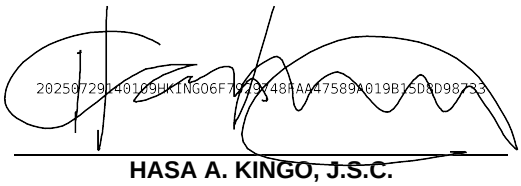
For all these reasons, the City has met its burden of demonstrating the absence of prior written notice and the lack of any affirmative negligent act that immediately produced the hazardous condition. In response, Plaintiff fails to raise any triable issues of fact. The City's motion is therefore granted. As such, it is hereby

ORDERED that the motion by Defendant THE CITY OF NEW YORK for summary judgment pursuant to CPLR § 3212 is hereby granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Defendant THE CITY OF NEW YORK and against Plaintiff dismissing all claims with prejudice, and removing Defendant THE CITY OF NEW YORK from the caption of this action; and it is further

ORDERED that as Defendant THE CITY OF NEW YORK is no longer a party to this action, this matter is referred to a general IAS part to resolve Plaintiff's claims against the remaining Defendants.

This constitutes the decision and order of the court.



7/29/2025
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:	X	INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE