

Walker v City of New York

2025 NY Slip Op 32787(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 157878/2016

Judge: Richard Tsai

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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. RICHARD TSAI PART 21

Justice

-----X

DOROTHY WALKER,
Plaintiff,

INDEX NO. 157878/2016

MOTION DATE 03/20/2024

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, METROPOLITAN TRANSIT
AUTHORITY, MTA, NEW YORK CITY TRANSIT
AUTHORITY, PORT AUTHORITY OF NEW YORK AND
NEW JERSEY,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 49-85
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ORDERED that defendant City of New York's
motion for summary judgment dismissing the complaint as against it is DENIED.

In this action involving a trip and fall over a rectangle manhole cover, defendant
City of New York (City) now moves for summary judgment dismissing the action as
against, on the grounds that it did not have prior written notice of the defect as required
by Administrative Code § 7-201.

Plaintiff opposes the motion, arguing that the City had notice by virtue of a Big
Apple Map, among other things. Defendants Metropolitan Transportation Authority,
sued herein as Metropolitan Transit Authority and MTA, and the New York City Transit
Authority (collectively, the Transit Defendants) also oppose the motion, adopting
plaintiff's arguments.

At her deposition, plaintiff testified that, on November 13, 2015, while walking to
a store, she stepped into the crosswalk on West 35th Street, along 7th Avenue in
Manhattan, while heading towards West 36th Street (see Exhibit J in support of City's
motion, plaintiff's EBT at 16, line 18 through 17, line 9; at 17, lines 20-24; at 19, lines 2-
4; at 23, lines 11-19 [NYSCEF Doc. No. 61]). According to plaintiff, when she was
"somewhat in the middle of the street," she tripped over the right side of a square, metal
plate in the crosswalk and fell in the street (id. at 24, lines 6-11; at 25, lines 17-20; at 26,
lines 3-6).

According to the City, plaintiff marked and circled a photograph of the area where
she fell at her 50-h hearing:



(see Exhibit I in support of City's motion [NYSCEF Doc. No. 60]).¹

The City argues that it did not have prior written notice of the defect, as required under Administrative Code § 7-201 (c) (2). In support of its motion, the City submits an affidavit from Henry Williams, a paralegal who conducted a search of records of the NYC Department of Transportation (DOT) (see Exhibit L in support of City's motion [NYSCEF Doc. No. 63]). The City maintains that none of the records located involved the hardware or location at issue (affirmation of City's counsel in support of motion ¶¶ 28-38 [NYSCEF Doc. No. 50]).

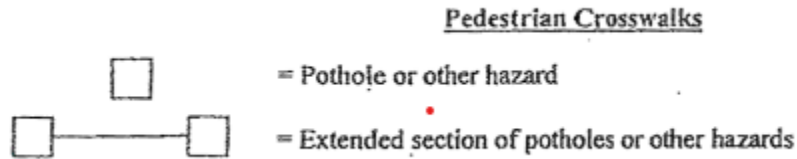
The City also asserts that the Big Apple Maps do not provide the City with prior written notice. According to the City, the most recent Big Apple Map, served on October 23, 2003, does not have a symbol for a "pothole or other hazard" in the crosswalk between the north and south sides of West 35th Street and 7th Avenue (see affirmation of City's counsel in support of motion ¶ 39). The City also argues that the symbol cannot confer notice upon the City of the specific defect at issue because it does not constitute notice of an uneven, sunken area in the roadway (*id.*).

Lastly, the City claims that it did not cause or create the alleged condition, in that none of the permits produced in the DOT record search indicated that the City undertook any work at the location where plaintiff allegedly tripped and fell (*id.* ¶ 47).

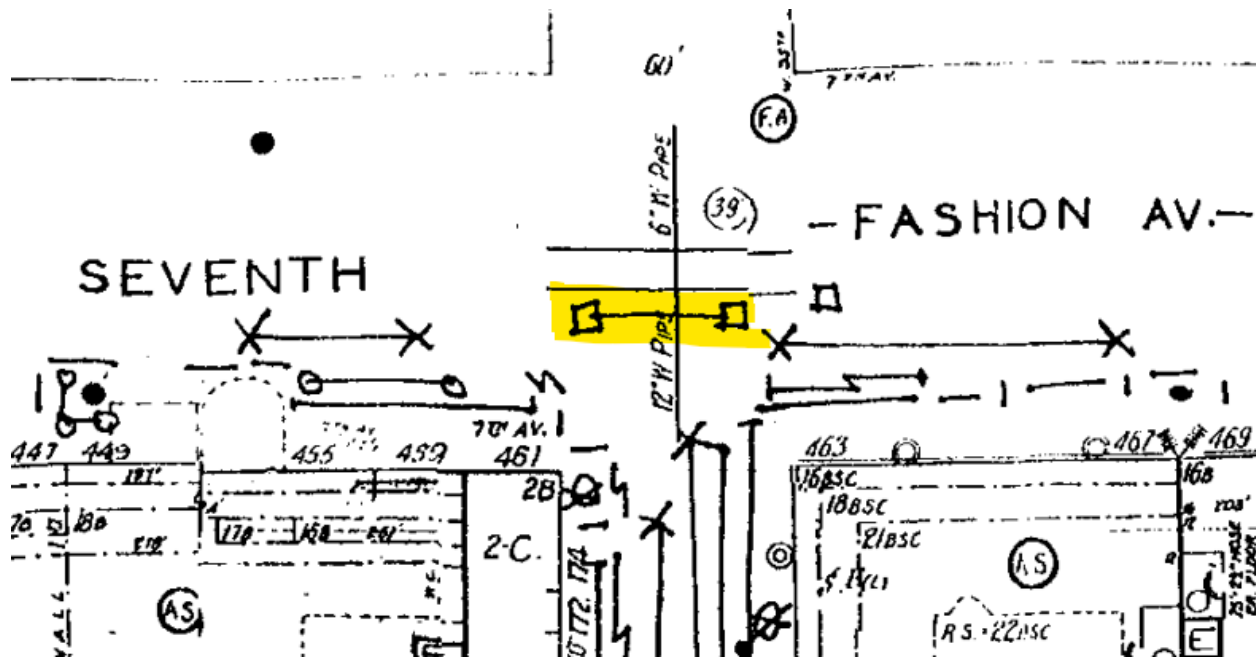
In opposition, plaintiff argues that, contrary to the City's contention, the Big Apple Map does indicate a symbol for "pothole or other hazard" in the crosswalk where plaintiff claims to have fallen.

¹ A review of plaintiff's 50-h hearing transcript does not indicate that photographs were marked at the 50-h hearing (see Exhibit H in support of City's motion, 50-h hearing transcript [NYSCEF Doc. No. 59]). However, plaintiff did not object to the admissibility of the photograph.

As the City points out, a defect in a pedestrian crosswalk is marked as follows on a Big Apple Map:



Plaintiff points out that, in the City’s own Big Apple Map, “an extended section of potholes or other hazards” is marked between the south and north sides of West 35th Street, east of Seventh Avenue:



(see Exhibit K in support of City’s motion, Big Apple Map [NYSCEF Doc. No. 62]; see also plaintiff’s Exhibit A in opposition to City’s motion [NYSCEF Doc. No. 73] [emphasis added]).

Additionally, plaintiff argues that a complaint made on August 30, 2014 contained in records from the NYC Department of Environmental Protection (DEP) constituted prior written notice:

Address(B):	W 35 ST	APT:		
Cross Street(s):	7 AVE BROADWAY	ZIP: 10001	Pct: 014	
Compass Direction:		Borough: MANHATTAN		
Building ID:	0	Block:	SegmentID: 0033920	
		Lot:	CMBD: 105	
Location:		District:	Parcel:	
Area:	1 MANHATTAN	Sub-Area: 105 MANHATTAN COMMUNITY BOARD 5		
# of Calls:	N/A	Occurred Date:	N/A	
Taken By:	DOT-HIQA	CARS, DOT	Call Date:	
Responsibility:	SM	SEWER MAINTENANCE-MANHATTAN	Request Date:	
Scheduled Date:	N/A	Start Date:	09-03-2014 11:03 AM	
Inspector:	3289	HANDIBODE, MICHAEL	Priority:	
Resolution Code:	SDUP1	DUPLICATE AFTER INSPECTION	Inspection Date:	
Customer Contact Requested:	N	Incident Date:	N/A	
		Due Date:	N/A	
Primary Caller Information				
Title:		Reference#	20145480317	
Last Name:	HIQA	Evening Phone:	N/A	
First Name, MI:	DOT	Cell Phone:	N/A	
Address:		Day Phone:	N/A	
City/State/Zip:	MANHATTAN	Call Date:	08-30-2014 06:16 AM	
Caller Comments:	CAR: 20145480317DEFCT CODE: 95-Defective HardwareCAR comments: 2 door service box marked sewer is sunken 1" causing a trip hazard in the east crosswalk of west 35 st & 7 avenue. In front of Andrews coffee shop.PERMIT# MNP2014548154			
Log Type	Log Started	Log Ended	Log By	Comments
FOLLOWUP	09-03-2014	09-03-2014	1945-CHEUNG, WING KEUNG	Duplicate to csr# 185445017 Input By: WING KEUNG CHEUNG on 9/6/2014 11:04:20 AM

(see Exhibit M in support of City's motion, DEP records [NYSCEF Doc. No. 64] [plaintiff's emphasis]).

In reply, the City argues that the Big Apple Maps could not have given prior written notice of the defect, because the defect does not appear in street view photograph of the crosswalk in Google Maps as of June 2014 (see reply affirmation of City's counsel ¶ 5) [NYSCEF Doc. No. 82]). The City also argues that the DEP records do not constitute prior written notice because the complaint was a duplicate of another complaint, CSR #185445017, which was purportedly resolved on July 6, 2012, three years before plaintiff's alleged trip and fall.

Viewing the evidence in the light most favorable to plaintiff, the non-movant, the court agrees with plaintiff that the notation of an "extended section of a pothole or other hazard" on the Big Apple Map raises an issue of fact whether the City had prior written notice of the alleged defect (*McDaniel v City of New York*, 209 AD3d 409, 410 [1st Dept 2022]). "Whether the defect depicted on the map is the defect of which plaintiff complains, thus satisfying the Administrative Code of the City of New York § 7-201 (c) (2), is a question for the jury" (*id.* at 410). "Factual issues as to the precise location of the defect and whether the defect is designated on the map should be resolved by a jury" (*Sanchez v City of New York*, 176 AD3d 490, 491 [1st Dept 2019]).

The unauthenticated photographs from Google street view that the City submitted for the first time in reply constituted new evidence that cannot be considered by the court in support of the City's prima facie showing (*Guayara v H.P.S.O.N.Y., Inc.*,

238 AD3d 451 [1st Dept 2025]; *McDaniel*, 209 AD3d at 410 [“The City inappropriately waited until its reply to argue that certain Google Maps images demonstrated that no actionable defect existed at the accident location”]. In any event, “the issue of whether the Big Apple Map was sufficiently close in time to provide prior written notice, and whether the area had remained unchanged, was a question for the jury” (*Bchakjan v City of New York*, 210 AD3d 519, 519 [1st Dept 2022]).

Additionally, CSR #185808429 is sufficient to raise an issue of fact as to whether the City had prior written notice of the defect. Although the City argues that the complaint was a duplicate of a prior complaint in 2012 that had already been resolved (CSR #185445017), it is not clear from the DEP records that the tripping hazard noted in CSR #185808429 had, in fact, been repaired and made safe back in 2012, when CRS #185445017 was purportedly “resolved.” CSR #185445017 noted that the “2 door access cover is sunken 3” [inches] in the crosswalk,” whereas CSR #1858084209 noted that the “2 door service box marked sewer is sunken 1”[inch].” It is not clear whether any repair was made in August 2014, or whether the complaint was marked resolved because it was deemed a duplicate of CSR #185445017. When asked at the deposition, “Do you know what it means under where it says resolution code duplicate under [sic] inspection,” the witness from the DEP answered, “No” (at 29, line 24 through 30, line 3).



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<u>7/30/2025</u> DATE		<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<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