

Vybohova v Daytona Holding Corp.

2025 NY Slip Op 32791(U)

August 1, 2025

Supreme Court, New York County

Docket Number: Index No. 158232/2018

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

MICHAELA VYBOHOVA,

Plaintiff,

- v -

DAYTONA HOLDING CORP., NEW YORK CITY TRANSIT
AUTHORITY, METROPOLITAN TRANSPORTATION
AUTHORITY, and THE CITY OF NEW YORK,

Defendants.

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INDEX NO. 158232/2018

MOTION DATE 03/26/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 42-72
were read on this motion to/for JUDGMENT – SUMMARY.

Upon the foregoing documents, it is **ORDERED** that defendant Daytona Holding Corp.'s motion for summary judgment dismissing the complaint as against it and all cross-claims is **DENIED**.

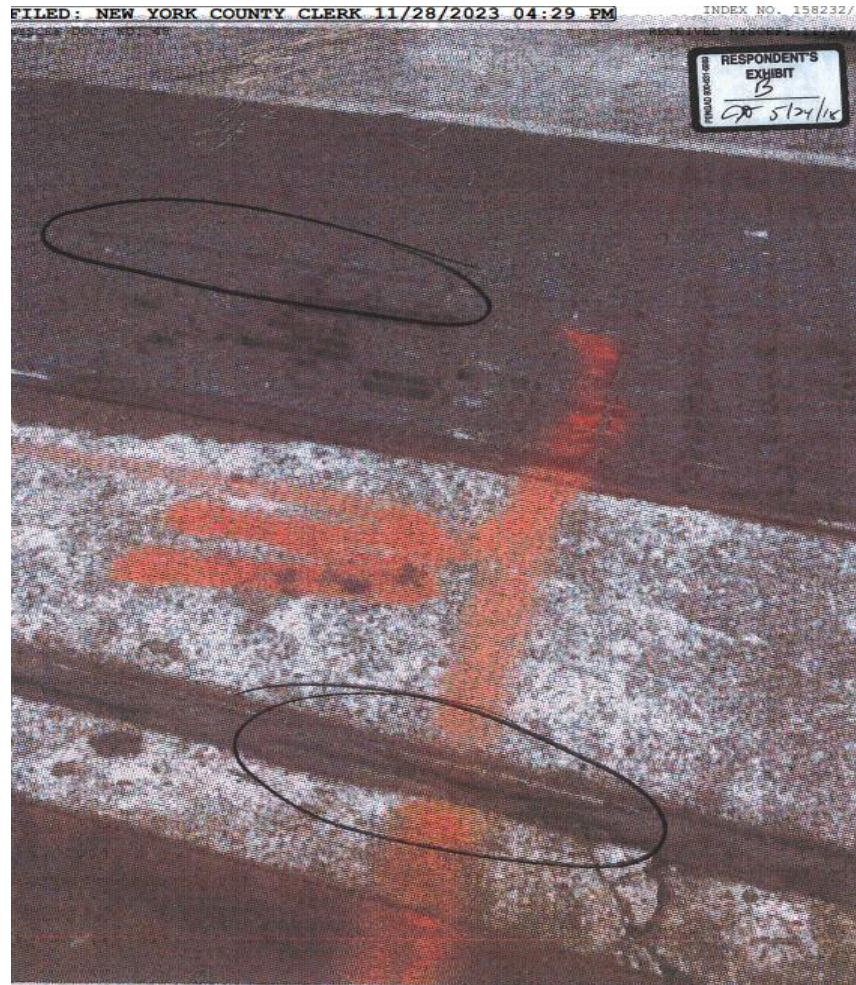
In this action arising out of an alleged trip and fall, defendant Daytona Holding Corp., the alleged abutting property owner, moves for summary judgment dismissing the complaint as against it and all cross-claims, on the ground that, under 34 RCNY 2-07, it had no responsibility to maintain or repair the area where plaintiff had tripped.

Plaintiff opposes the motion. Defendants New York City Transit Authority and Metropolitan Transportation Authority (collectively, the Transit Defendants) also oppose the motion.

At plaintiff's 50-h hearing, she testified that, on July 31, 2017, at approximately 11:00 a.m., she was walking on the sidewalk of 8th Avenue (Exhibit C in support of motion, 50-h hearing tr at 13, line 25 through 14, line 9; at 16, line 16 through 17, line 11 [NYSCEF Doc. No. 47]). According to plaintiff, she then stepped off the sidewalk to avoid some people (*id.* at 17, lines 13-14). She testified that she took two or three steps and then stepped back up to the sidewalk (*id.* at 17, line 25 through 18, line 4).

Plaintiff stated that she stepped back up with the right foot, and as she was stepping back, her left foot got caught on "the uneven sidewalk," and she fell forward "with my hands and knees first" (*id.* at 18, line 20 through 19, line 5). According to plaintiff, her knee came into contact with a subway grate, which was not level and sharp (*id.* at 19, line 23 through 20, line 6).

Plaintiff was shown two photographs of the accident location during her 50-h hearing, which were marked as Respondents' Exhibits A and B (*id.* at 21, lines 6-14). When asked to circle the area where her left foot got caught, plaintiff drew a circle on Exhibit B (*id.* at 23, lines 9-16). When asked to circle the area where her knee came into contact with the grate, plaintiff drew another circle on Exhibit B (*id.* at 23, line 17 through 24, line 3):



(see Exhibit D in support of motion [NYSCEF Doc. No. 48]).

Daytona Holding Corp. (Daytona) argues that, pursuant to 34 RCNY 2-07 (b) (1), it has no legal duty to maintain or repair the area between the curb and the subway grate, where plaintiff's left foot had got caught (affirmation of Dayton's counsel in support of motion ¶¶ 10-20 [NYSCEF Doc. No. 44]). Dayton also denies that it had created the defect or made special use of the area, based on the deposition testimony of Martin Levine, the president of Daytona (*id.* ¶¶ 21-22).

In opposition, plaintiff argues that Daytona did not meet its prima facie burden because it failed to put forth any evidence that the defective condition was within 12

inches of the perimeter of the grating (affirmation of plaintiffs' counsel in opposition ¶ 13 [NYSCEF Doc. No. 62]).

In opposition, the Transit Defendants argue that Daytona's motion must be denied because it failed to annex all the pleadings (affirmation of Transit Defendants' counsel ¶ 3 [NYSCEF Doc. No. 55]). Additionally, they contend that the photographs are "blurry, highly pixelated, and of low resolution," and there are no measurements (*id.* ¶ 8). Lastly, the Transit Defendants assert that, based on records from the NYC Department of Transportation, Daytona had engaged in construction work in the area prior to plaintiff's trip and fall (*id.* ¶ 13).

In reply, Daytona attaches the answers of defendant City of New York and the Transit Defendants. Daytona argues that measurements were not required because a concrete pad extended from the subway grate, and plaintiff's left foot got caught in an expansion joint that was between the curb and the concrete pad (reply affirmation of Daytona's counsel ¶ 14 [NYSCEF Doc. No. 66]). Finally, Daytona contends that the DOT records upon which the Transit Defendants rely do not refer to properly that Daytona owned, which was located at 200 8th Avenue, but rather to properties located at 199 8th Avenue, 198 8th Avenue, and 202 8th Avenue (*id.* ¶ 12).

34 RCNY § 2-07 (b) imposes upon the owner of a cover or grating on a street a nondelegable duty of maintenance and repair of the cover or grating, as well as the area extending 12 inches from its perimeter (*Roa v City of New York*, 188 AD3d 504 [1st Dept 2020]; *Storper v Kobe Club*, 76 AD3d 426 [1st Dept 2010]; *Hurley v Related Mgt. Co.*, 74 AD3d 648 [1st Dept 2010]). "There is nothing in Administrative Code § 7-210 to show that the City Council intended to supplant the provisions of 34 RCNY 2-07 and to allow a plaintiff to shift the statutory obligation of the [owner of the grates] to the abutting property owner" (*Storper*, 76 AD3d at 427). Thus, "34 RCNY 2-07(b) provides an exception to the landowner's liability with respect to covers and their surrounding street areas" (*Jones v Vornado New York RR One L.L.C.*, 223 AD3d 467, 468 [1st Dept 2024]).

Here, Daytona failed to prove that the area where plaintiff's left foot got caught was within 12 inches of the grate, as no measurements were submitted on this motion.

As Daytona points out, the 12-inch perimeter is extended where a concrete pad is installed around the cover or grating. 34 RCNY 2-07 (b) (1) specifically states, in relevant part, "The owners of covers or gratings on a street are responsible for monitoring the condition of the covers, gratings and concrete pads installed around such covers or gratings and the area *extending twelve inches outward from the edge of the cover, grating, or concrete pad, if such pad is installed*" (emphasis supplied).

However, Daytona failed to establish that the area where plaintiff's left foot got caught was a concrete pad around the grating. The affirmation of counsel, who has no personal knowledge of the facts and who is not an expert, has no probative value (see *Jones v 3417 Broadway LLC*, 172 AD3d 551 [1st Dept 2019]).

Thus, Daytona failed to meet its prima facie burden for summary judgment as a matter of law.

In light of the court's determination, the court need not reach the other arguments raised in opposition to the motion.



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8/1/2025

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE