At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 31st day of July 2025.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

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ANATOLIY ELKIN,

Plaintiff

DECISION & ORDER

- against -

Index No.: 516177/2017

SOFIA LISOGOR, MARINA FRIDMAN, NATIONAL GRID, PLC, THE BROOKLYN UNION GAS COMPANY D/B/A NATIONAL GRID, NEW YORK PAVING INC, 86TH ST. PHARMACY CORP., JULIA'S BOUTIQUE INC.,

Motion Sequence: 11

Defendants

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The following papers read on this motion:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Affidavits (Affirmations) and Exhibits	260-323
Cross-motions Affidavits (Affirmations) and Exhibits	
Answering Affidavit (Affirmation)	331-332, 333
Reply Affidavit (Affirmation)	334-335
Supplemental Affidavit (Affirmation)	

This personal injury action arises from a July 13, 2017, incident in which Plaintiff ANATOLIY ELKIN alleges he tripped and fell on a raised sidewalk flag located in front of

201 Brighton Beach Avenue, Brooklyn, New York. The property abutting the sidewalk is co-owned by defendants SOFIA LISOGOR and MARINA FRIDMAN.

The sidewalk flag had been excavated in December 2015 and restored in April 2016 in connection with subsurface installation of anodes inside a gas test box performed by Brooklyn Union Gas Company d/b/a National Grid ("National Grid") contractor.

On August 7, 2017, less than one month after Plaintiff's fall, the DOT issued a Corrective Action Request (CAR) to National Grid's paving contractor identifying deficiencies in the flag and directing that it be repaved

Defendants LISOGOR and FRIDMAN now move for summary judgment pursuant to CPLR 3212, seeking dismissal of all claims and crossclaims asserted against them. They argue National Grid and its contractor were responsible for maintaining the sidewalk flag pursuant to 34 RCNY § 2-11(e)(16)(ii), and that they did not create the alleged defect, or make any special use of the sidewalk.

Plaintiff opposes the motion and maintains that factual questions remain as to the source of the defect and the scope of the abutting owners' responsibility under New York City Administrative Code § 7-210.

The primary issue presented is whether National Grid's responsibility to maintain the sidewalk flag its contractor replaced pursuant to 34 RCNY § 2-11(e)(16)(ii), displaces the abutting property owners' responsibility to maintain the sidewalk pursuant to Administrative Code § 7-210.

In a trip-and-fall case involving a public sidewalk in New York City, liability for maintenance generally falls on the abutting property owner under Administrative Code § 7-210. That statute imposes a nondelegable duty to keep the sidewalk in a reasonably safe condition.

However, pursuant to 34 RCNY § 2-11(e)(16)(ii), a permittee performing work on a public sidewalk is "responsible for permanent restoration and maintenance of street openings and excavations for a period of [at least] three years ... commencing on the restoration completion date".

Courts interpreting the two statutes have held that where a plaintiff's injury occurs within three years of restoration performed under a DOT permit, the utility not the adjacent landowner, is responsible for any resulting defect unless the owner created or made special use of the defect (see *Cordell v Brooklyn Union Gas*, 234 AD3d 815 [2d Dept 2025]; *Maldonado v 527 Lincoln Place, LLC*, 173 AD3d 730, at 731 [2d Dept 2019].)

Plaintiff's alleged fall occurred on July 13, 2017, which was approximately fifteen months after the restoration was completed which was within the three-year maintenance window imposed on the utility permittee by 34 RCNY § 2-11(e)(16)(ii).

Further, Defendants have demonstrated that they did not cause or make special use of the defective sidewalk flag.

Both Defendants testified they did not perform, direct, or authorize any sidewalk work, and no permits or records indicate that they did. The work was done by a contractor under a DOT permit issued to National Grid. The sidewalk flag does not contain any features indicating special use, such as a curb cut or private entrance (*Landau v Town of Ramapo*, 207 AD2d 384, at 385 [2d Dept 1994]).

Because responsibility to maintain the flag at the time of the accident was on the utility, it is immaterial whether the abutting owners had constructive notice of the condition (*Cordell v Brooklyn Union Gas*, 234 AD3d 815 [2d Dept 2025]; *Maldonado v 527 Lincoln Place, LLC*, 173 AD3d 730, at 731 [2d Dept 2019]).

Accordingly, pursuant to 34 RCNY § 2-11(e)(16)(ii), and consistent with case law interpreting that regulation, liability for the alleged defect lies with the utility permittee, not with the Defendant property owners.

Plaintiff's argument that Defendants have not shown the defect was within 12 inches of the gas test box, and thus have not established that the utility was liable under 34 RCNY § 2-07(b)(1), is misplaced.

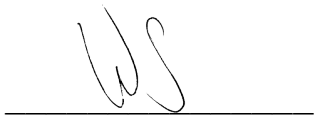
Defendants do not rely on § 2-07(b)(1), but on 34 RCNY § 2-11(e)(16)(ii), which assigns responsibility to the utility permittee for conditions arising from permitted sidewalk restoration. The alleged defect, a raised sidewalk flag, resulted from improper repaving of the entire flag, not from a localized defect near the test box.

WHEREFORE, it is hereby ORDERED that the motion of Defendants LISOGOR and FRIDMAN is Granted, and the complaint is dismissed as against them; and it is further,

ORDERED that all cross claims against Defendants LISOGOR and FRIDMAN are dismissed.

This constitutes the Decision and Order of the Court.

E N T E R:



JSC