

**Frier v Consolidated Edison, Inc.**

2025 NY Slip Op 33255(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 150137/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO**

**PART 33M**

*Justice*

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SHERRY FRIER,

Plaintiff,

- v -

CONSOLIDATED EDISON, INC., APF PROPERTIES LLC,  
and TRIUMPH CONSTRUCTION CORPORATION

Defendants.

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INDEX NO. 150137/2021

MOTION DATE 08/20/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of May 28, 2025, Defendant APF Properties LLC’s (“APF Properties”) motion for summary judgment dismissing Plaintiff Sherry Frier’s (“Plaintiff”) Complaint and all cross claims asserted against it is granted.

On August 12, 2020, as Plaintiff walked on the sidewalk in front of 183 Madison Avenue (the “Premises”) her shoe got stuck in a hole near a steel plate on the sidewalk, and she fell (NYSCEF Doc. 44 at 22-24). The Premises are owned by APF Properties (NYSCEF Doc. 47). The sidewalk contains electrical vaults owned by Defendant Consolidated Edison, Inc. (“Con Edison”) (NYSCEF Doc. 47 at 14). Defendant Triumph Construction Corporation (“Triumph”) was retained by Con Edison to remove a transformer roof in the vicinity of Plaintiff’s fall (NYSCEF Doc. 50 at 15; *see also* NYSCEF Doc. 51). After the transformer roof was removed, Triumph covered the hole in the sidewalk with a steel plate (NYSCEF Doc. 50 at 15-16). Plaintiff believes asphalt was missing in the area she fell (NYSCEF Doc. 44 at 28).

The day before Plaintiff's fall, AFP Properties' manager, Ravel Diaz, e-mailed Con Edison regarding the steel plate (NYSCEF Doc. 48). Mr. Diaz testified he believed the steel plate could be a tripping hazard (NYSCEF Doc. 47 at 47). AFP Properties now moves for summary judgment dismissing Plaintiff's Complaint asserted against it, and Plaintiff opposes.

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Pursuant to 34 RCNY § 2-07(b)(1) "owners of covers or grating on a street are responsible for monitoring the condition of the covers, gratings and concrete pads installed around such covers or grating and the area extending twelve inches outward from the edge of the cover." Section 2-07(b)(2) requires the owners of such covers and gratings to repair any defective street condition found within an area extending twelve inches from the perimeter of the cover or grating." For this reason, there are many First Department cases dismissing landowners from premises liability cases where a pedestrian falls due to a defect within 12 inches from a metal grate or covering owned by New York City, a New York State agency, or a utility company (*see, e.g., Robles-Lopez v E.S.H. Family Corp.*, --- N.Y.S.3d ----, 2025 N.Y. Slip Op. 03983 at \*1 [1st Dept 2025]; *Jones v 3417 Broadway LLC*, 172 AD3d 551 [1st Dept 2019]; *Storper v Kobe Club*, 76 AD3d 426, 427 [1st Dept 2010]).

Here, APF Properties has met its prima facie burden of showing that the steel plate was used as a cover within the meaning of 34 RCNY § 2-07(b) as it was installed by Con Edison, through its subcontractor Triumph, and it was placed on the sidewalk to cover a removed transformer roof, also owned by Con Edison, shortly prior to Plaintiff's accident. Plaintiff's testimony, submitted by APF Properties on its motion, establishes that the alleged hole in the asphalt surrounding the steel plate was well within twelve inches of the plate's outermost edge (NYSCEF Doc. 44 at 34; *see also* NYSCEF Doc. 45).<sup>1</sup>

Plaintiff, who is the only party to oppose the motion, fails to raise an issue of fact.<sup>2</sup> Given Plaintiff's testimony and the photographic evidence, Plaintiff's argument that APF Properties has not established Plaintiff's fall took place within twelve inches of the steel plate is without merit and is based on speculation. Despite the photograph and testimony identifying the defect in the asphalt being within inches of the steel plate, Plaintiff provides no countervailing evidence or measurements to raise an issue of fact. Likewise, Plaintiff's argument that the steel plate does not constitute a "cover" within the meaning of 34 RCNY § 2-07(b) is contrary to the definition of "cover"<sup>3</sup> and the undisputed evidence that the steel plate was placed on top of the hole caused by removal of the transformer roof. Therefore, APF Properties' motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it is granted.

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<sup>1</sup> Plaintiff testified that the photograph, marked as defense exhibit 2 (NYSCEF Doc. 45), shows the asphalt hole "near the cigarette butt" depicted in the photograph.

<sup>2</sup> Neither Triumph nor Con Edison oppose the motion, even though APF Properties through its motion argues that Triumph and Con Edison were exclusively responsible for installing, maintaining, and repairing the steel metal plate and surrounding asphalt.

<sup>3</sup> A cover, as defined by Merriam-Webster, is "something that is placed over or about another thing: lid, top".

Accordingly, it is hereby,

ORDERED that Defendant APF Properties LLC's motion for summary judgment dismissing Plaintiff Sherry Frier's Complaint and all cross claims asserted against it is granted; and it is further

ORDERED that within ten days of entry, counsel for Defendant APF Properties LLC shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/2/2025  
DATE

Mary V Rosado J.S.C.  
HON. MARY V. ROSADO, 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