

**Yan Fei Chen v LDLSATC Realty Corp.**

2025 NY Slip Op 33261(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 160295/2021

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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YAN FEI CHEN

Plaintiff,

- v -

LDLSATC REALTY CORP.,

Defendant.

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**INDEX NO.** 160295/2021

**MOTION DATE** 09/30/2024

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 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

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of June 9, 2025, Defendant LDLSATC Realty Corp.’s (“Defendant”) motion for summary judgment dismissing Plaintiff Yan Fei Chen’s (“Plaintiff”) Complaint is denied.

On September 3, 2019, Plaintiff fell down stairs at 196 Canal Street, New York, New York (the “Building”) allegedly due to an uneven surface on one of the steps (NYSCEF Doc. 37 at 16-17; 20). Defendant owned and maintained the Building (NYSCEF Doc. 38 at 18). Defendant admitted that the stairs should be level and smooth to help prevent people from falling, and admitted the step where Plaintiff fell was not level and smooth (NYSCEF Doc. 39 at 25-27). Defendant now moves for summary judgment dismissing Plaintiff’s Complaint, arguing that the alleged defect in the stairs is trivial, that Defendant did not have notice of the defect, and that the stairs do not violate the New York City Building Code.

“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]). Defendant's motion for summary judgment is denied.

As to Defendant's trivial defect defense, the Court of Appeals has stated whether there is a defective condition to create liability "depends on the particular facts and circumstances of each case and is generally a question of fact for the jury" (*Trincere v Co. of Suffolk*, 90 NY2d 976 [1997]; *see also McCabe v Avalon Bay Communities, Inc.*, 177 AD3d 487 [1st Dept 2019]). There is no "minimal dimension test" or per se rule regarding when a defect may be considered actionable (*Suarez v Emerald 115 Mosholu LLC*, 164 AD3d 1130 [1st Dept 2018]; *Herrera v City of New York*, 262 AD2d 120 [1st Dept 1999]). Whether the defect in the stairs is trivial is a triable issue of fact. This is especially the case where, as here, Plaintiff produced an expert affidavit from a professional engineer opining that the stair risers were not uniform, the nosing at the edge of the stair tread where Plaintiff fell was not slip resistant, and the surface of the stair where Plaintiff fell was, by Defendant's admission, uneven (NYSCEF Doc. 58).<sup>1</sup> Defendant's argument, raised on reply, that Plaintiff is raising new theories of liability in opposition to the motion is belied by Plaintiff's verified bill of particulars dated August 23, 2022 and supplemental bill of particulars dated May 6, 2024 (NYSCEF Docs. 35 and 52).

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<sup>1</sup> Defendant argues that this Court should disregard Plaintiff's expert's affidavit because he did not recite that he reviewed Plaintiff's deposition transcript and bill of particulars. However, even if this Court were to disregard Plaintiff's expert affidavit, the photographs and deposition testimony submitted by Defendant on its motion in chief raise triable issues of fact as to whether the defects in the stairs were trivial.

Defendant has failed to meet its *prima facie* burden of showing it lacked notice of the alleged defect. The defect is not a transient condition nor is it the kind of defect that forms overnight, so “constructive notice may be inferred from its existence” (*Genova v City of New York*, 165 AD3d 486, 487-88 [1st Dept 2018] citing *Johnson v 675 Coster St. Hous. Dev. Fund*, 161 AD3d 635 [1st Dept 2018]). Defendant submitted no evidence of when the stairs were last inspected, repaired, or maintained, precluding summary judgment on its lack of notice defense. (*see, e.g. Williams v Beth Israel Hospital Association*, 201 AD3d 429, 430-431 [1st Dept 2022]).

Finally, the parties’ two competing expert opinions dispute whether Defendant violated sections 27-375(e) and 27-375(h) of the 1968 Building Code making summary judgment on that issue inappropriate (*see, e.g. Gobind v Nercessian*, 227 AD3d 464 [1st Dept 2024]; *P.D. v Lacour-Gayet*, 174 AD3d 417 [1st Dept 2019]; *Severino v Weller*, 148 AD3d 272 [1st Dept 2017]). The weight and credibility of the competing expert opinions are reserved for the fact finder at the time of trial (*Clindinin v New York City Hous. Auth.*, 117 AD3d 628 [1st Dept 2014]). Moreover, a violation of the New York City building code only constitutes evidence of negligence and is not dispositive (*Baez v 1749 Grand Concourse LLC*, 178 AD3d 520 [1st Dept 2019]). Defendant has an independent obligation at common law to ensure the premises are kept in a safe condition (*Castellanos v 57-115 Associates, L.P.*, 211 AD3d 459, 460 [1st Dept 2022]). Therefore, Defendant’s motion for summary judgment is denied.

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Accordingly, it is hereby,

ORDERED that Defendant LDLSATC Realty Corp.'s motion for summary judgment dismissing Plaintiff Yan Fei Chen's Complaint is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy for 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:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
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