

Seltzer v Steinberg

2025 NY Slip Op 33333(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 160992/2020

Judge: Ariel D. Chesler

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X

LINDA SELTZER,

Plaintiff,

- v -

JONATHAN STEINBERG, MARIA BARTIROMO, SIMON
NAPARSTEK, MAGUY NAPARSTEK, THE CITY OF NEW
YORK

Defendant.

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INDEX NO. 160992/2020

MOTION DATE 08/12/2025,
08/12/2025,
08/12/2025

MOTION SEQ. NO. 001 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 96, 97, 98, 99, 100, 108

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER) .

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 89, 91, 92, 93, 94, 95, 106, 109

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 101, 102, 103, 104, 105, 107, 110, 111

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER) .

Upon the foregoing documents, it is

Defendants, SIMON NAPARSTEK and MAGUY NAPARSTEK (hereinafter “the “Naparstek”), move for an order, pursuant to CPLR § 3212, granting summary judgment dismissing plaintiff’s Complaint and all cross-claims. Plaintiff does not oppose the motion.

Defendants, JONATHAN STEINBERG and MARIA BARTIROMO (hereinafter “Steinberg” and “Bartiromo”), move for an order, pursuant to CPLR § 3212, granting summary judgment dismissing plaintiff’s Complaint and all cross-claims.

Defendant, CITY OF NEW YORK (hereinafter “City”) moves for an order, pursuant to CPLR § 3212, granting City summary judgment dismissing the complaint.

BACKGROUND

On October 19, 2019, at approximately 10:30 am, plaintiff was walking upon the sidewalk and allegedly sustained injuries due to an alleged dangerous and defective condition on the public sidewalk abutting the properties known as 213 East 62nd Street and 215 East 62nd Street (“subject location”). The fall is claimed to have occurred near the property line between the two aforementioned properties. Defendants Steinberg and Bartiromo own the single-family home located at 213 East 62nd Street, and co-defendants, the Naparstecks, own the single-family home at 215 East 62nd Street. Plaintiff has also brought suit against the City. Plaintiff alleges that the defendants, at the time of the accident, negligently caused, created, allowed and/or permitted the alleged dangerous condition at the subject location. Plaintiff commenced this action on or about December 17, 2020, by filing a Summons and Complaint. The Naparstecks served an Answer on February 17, 2021, and co-defendants Steinberg and Bartiromo served their Answer on March 4, 2021. On March 2, 2021, issue was joined as to the City.

DISCUSSION

The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. New York Univ. Med., Ctr.*, 64 NY2d 851 [1985]). “The proponent of summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant has satisfied this standard, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Kaufman V. Silver*, 90 NY2d 204 [1997]). To defeat a motion for summary judgment, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of

material questions of fact (*Elstein v. City of New York*, 209 AD2d 186 ([1st Dept 1994])). Mere conclusions, unsubstantiated allegations or assertions are insufficient to create an issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*see Celardo v. Bell*, 222 AD2d 547,548, [2d Dept 1995]).

Motion Sequence 1

In support of this motion, defendants, the Naparstekes, contend that the dismissal of the Complaint and all cross-claims is justified because plaintiff's accident did not occur in front of their property, and the alleged defect is not on their property. In support of this argument, the Naparstekes point to the Affirmation of David A. Shaw, a professional land surveyor. He affirms that on December 18, 2024, he performed a site inspection of the properties located at 215 East 62nd Street and 213 East 62nd Street in New York, NY 10065 (*see* NYSCEF Doc. No. 68). Based upon the surveyor's review of documents, site inspection, and a survey of the subject properties, the surveyor identified the alleged defect on the sidewalk that caused plaintiff to trip and fall to be entirely located on 213 East 62nd Street, and no part of the defect to be located on 215 East 62nd Street (*id.*).

However, the Naparstekes contend that even if the Court finds plaintiff's accident occurred on the sidewalk in front of their property, they are entitled to the exception under §7-210 of the New York City Administrative Code. The Naparstekes attest that their own testimony, affirmation and Deed, conclusively establish that they are the owners of 215 East 62nd Street, New York, NY, a one-family home, which makes the NYC Administrative Code inapplicable. As such, the Naparstekes argue that the only way they may be held liable is if they created the alleged defect or caused it to occur through a special use, which they argue they did not.

Plaintiff submits no opposition to the motion.

Pursuant to section 7-210 of the Administrative Code of the City of New York (“§7-210”) “[i]t shall be the duty of the owner of real property abutting any sidewalk...to maintain such sidewalk in a reasonably safe condition.” However, §7-210 also contains an exception in which the City retains responsibility for sidewalks abutting a “one-,two-, or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) exclusively used for residential purposes.” These homeowners can only be liable if they created or exacerbated the alleged hazardous condition” (*Napoli v. Di Marco*, 148 AD3d 423 [1st Dept 2017]).

Here, the Naparstek’s deposition testimony, affirmation and Deed show they are owners of 215 East 62nd Street, New York, NY, which is a one-family residential home, which., defendants were living in on October 19, 2019, the date of plaintiff’s incident. As such, the residence is exempt from liability under Administrative Code §7-210 (*Hernandez v. Ortiz*, 165 AD3d 559, 559 [1st Dept 2018] [“defendant’s testimony that she lived in a one-family home...was sufficient competent evidence to make a prima facie showing that she qualified for the exemption provided at Administrative Code of City of N.Y. §7-210(b)”]). There is no evidence that suggests that defendants, the Naparsteks, caused or created the alleged defect on the sidewalk, or used the sidewalk for a special use. For the reasons stated herein, defendants, the Naparstek’s, motion for summary judgment (motion sequence 001) is granted.

Motion Sequence 2

In support of this motion, defendants, Steinberg and Bartiromo, contend that plaintiff’s Complaint and all cross-claims should be dismissed because they own the single-family home at 213 East 62nd Street and are exempt from liability under New York City’s Administrative Code § 7-201. Steinberg and Bartiromo point to their own deposition testimony wherein they testified

that 213 East 62nd Street, New York, New York has been owned by them since 2006, and the property is a one-family home that was their primary residence prior to and at the time of the accident. They also testified that they have never rented the property. Defendants further contend that they neither caused nor created any purported conditions nor made special use of the sidewalk at issue. Defendants concede that in 2012 and 2013, they hired a construction company to perform work at the property which included smoothing out sidewalk flags abutting their property. Pointing to New York State licensed professional engineer, Rudi Sherbansky's Report, where he examined that location and attests that any height differential at the location of the incident was caused by tree roots growing horizontally and not any work activity (*see* NYSCEF Doc. No. 52), defendants argue the work completed in December 2012 and January 2016 was not an affirmative act of negligence that "immediately resulted" in a dangerous condition.

In opposition to this motion, plaintiff contends defendants Steinberg's and Bartiromo's deposition testimony shows defendants made inadequate repairs in 2012 and 2013, which involved the subject defect on the sidewalk as well as an expert report regarding the defendants' liability of the subject defect that caused plaintiff's accident. Therefore, plaintiff attests issues of fact exist as to whether defendants caused and created the alleged dangerous condition which allegedly caused plaintiff's accident and injuries. Plaintiff points to Steinberg's deposition testimony, wherein he testified that himself and defendant Bartiromo, hired a contractor to make repairs to the front sidewalk (the subject defect) of the subject property after moving into the home in 2006-2007. Further, during the EBT, Steinberg testified that he could not remember if any other repairs were done to the home after that date of the prior repairs. Plaintiff also submits an Affirmation of expert engineer, Robert T. Fuchs, wherein he affirms that based on his inspection of the subject sidewalk, and review, the uneven condition of the sidewalk had not

developed suddenly and existed for over 1 year and 6 months prior to the accident, during which time the uneven joint was patched. He additionally concludes that the surface patchwork was performed by the adjoining property owner, constituted a substantial defect that violated DOT regulations and failed to address the hazard posed by the uneven sidewalk flags. Since plaintiff and defendants submit conflicting expert engineer reports and opinions regarding the subject defect and which part is liable, plaintiff contends there are issues of fact making summary judgment improper.

Specifically, plaintiff attempts to rebut Steinberg and Bartiromo's prima facie showing by alleging that there is testimony and evidence of prior repairs done by defendants to the subject sidewalk and defect before plaintiff's accident which presents issues of fact regarding the cause and creation of the dangerous condition. Plaintiff points to an invoice dated January 21, 2013, of COLOUR, LLC, a construction company who was hired by defendants, Bartiromo and Steinberg, for extensive construction on their property including the subject defect in 2012-2013 (*see* NYSCEF Doc. No. 95). Specifically, plaintiff highlights that the invoice states "remove old supply, install new caulk at sidewalk labor" as well as "14 tubes NP1 caulk for the sidewalk" (*id.*).

In reply, defendants argue that they have not performed any recent work to the sidewalk, as the last time construction work was conducted in front of defendants' home was December 2012 into January 2013, well over six years before plaintiff's alleged incident. In addition, defendants argue that plaintiff's expert engineer concedes that the raised sidewalk defect "was uneven along a transverse joint as a result of the pressure imposed by the underlying and growing roots of a nearby tree located within a curbside pit" (*see* NYSCEF Doc. No. 92, pg. 13), which admits that no act by Steinberg and Bartiromo immediately resulted in a defect.

Since defendants are owners of a single-family residence, they have no duty towards plaintiff, unless they created or exacerbated the alleged hazardous condition (*Napoli v. Di Marco*, 148 AD3d at 1 [“Defendant, as a single family homeowner, could only be liable for the alleged half-inch height differential where the two sidewalk flagstones met in front of her house if she created or exacerbated the alleged hazardous condition”]; *Titova v. D’Nodal*, 117 AD3d 431, 1 [1st Dept 2014] [“Defendant made a prima facie showing that her property abutting the sidewalk where plaintiff allegedly fell is a two-family, owner-occupied residence, exempt from Administrative Code of City of NY § 7-210 (b), and that she did not create or cause the alleged hazardous condition”]), However, here, the prior repairs to the sidewalk in 2012-2013 coupled with the location of the defect in front of the defendants’ residence creates a material issue of fact about whether defendants created or caused the dangerous condition prior to plaintiff’s accident.

In addition, plaintiff’s expert concludes in his report “the improper patchwork and resulting failure to maintain the sidewalk in a good and safe condition that conformed to DOT regulations is an omission on behalf of the adjoining property owner that can be cited as a proximate cause for the accident” (*see* NYSCEF Doc. No. 102, pg. 13). In sum, the facts and record evidence presented show material issues of fact of whether defendants caused or created the condition alleged to have caused the incident (*Vigil v. City of New York*, 110 AD3d 986, 987 [2d Dept 2013] [“failed to establish, prima facie, its entitlement to judgment as a matter of law, since its moving papers did not eliminate triable issues of fact as to whether the plaintiff was caused to fall due to an alleged defect in the tree well, the sidewalk, or a combination of the two]).

Motion Sequence 3

In support of this motion, the City argues that it is entitled to summary judgment because it did not receive prior written notice of the subject condition pursuant to New York City Administrative Code § 7-201. The City states that Sherri Redi, a DOT employee, performed a search for two years prior to, and including October 19, 2019 for the subject sidewalk and it revealed the follow records: One Hundred and twelve (112) permits; One Hundred and twelve (112) hardcopy permits; One Hundred and twelve (112) Applications; Three (3) Office of Construction Mitigation and Coordination (OCMC) files; Zero (0) Corrective Action Requests (CARs); Two (2) Notices of Violation (NOVs); Zero (0) Notifications for Immediate Corrective Action (NICAs); One Hundred and Thirty (130) inspections; Zero (0) contracts; Zero (0) maintenance and repair orders/records; Five (5) complaints; Zero (0) Sidewalk Violations; Nine (9) Sidewalk Inspections located; Zero (0) Sidewalk Re-Inspections; Zero (0) Copies of Sidewalk Violations; Zero (0) Special events Reports; and Three (3) Big Apple Maps labeled as volume 6E pages 59, 57, 48 and 47 (*see* NYSCEF Doc. No. 85).

Based on the above, the City argues that permits revealed in the DOT search do not constitute prior written notice of the condition alleged to have caused plaintiff's incident. Similar to the permits issued in this case, none of the inspections or complaints revealed in the DOT search provide prior written notice of the alleged defect. The City also contends that a review of the one hundred and thirty (130) inspections from the DOT searches reveals that none relate to the condition alleged to have caused Plaintiff's incident. Further, as the DOT searches demonstrate, there were no violations issued regarding a broken and/or uneven concrete and brick sidewalk abutting the properties at 213-215 on East 62nd Street. The City also states that the Big Apple Maps do not provide the City with prior written notice of the alleged defect in the

subject location, as a review of the key to the Big Apple Maps do not reveal any symbol at the subject location that would indicate a defect on the sidewalk at 213-215 East 62nd Street. In addition, the City argues that the Complaints do not provide it with prior written notice as all the complaints revealed in the search pertain to a different sidewalk condition. In sum, the City states that none of these records revealed in the search reveal any results that could provide the City with prior written notice of the specific condition alleged to have caused plaintiff's incident.

In opposition, plaintiff contends there is evidence of prior written notice of the subject defect prior to the plaintiff's accident. Plaintiff argues that the Big Apple Map of the location of the accident prior to the date of plaintiff's accident proves that the City had prior notice. It is well settled that §7-201 limits the duty of care over municipal streets and sidewalks by imposing liability only for the defects where there was actual notice of the specific defect in the specified location and an opportunity to correct the hazardous condition (*see Katz v. City of New York*, 87 N.Y.2d 241 [1995]). Where the City establishes that it lacked prior written notice, the burden shifts to the plaintiff to demonstrate that the municipality created the defect through an affirmative act of negligence or that a special use confers a special benefit upon the locality (*Yarborough v. City of New York*, 10 NY3d 726 [2008]). The City can be held liable for affirmative negligence only when work by the City *immediately* results in a dangerous condition (*see Oboler v. City of New York*, 8 N.Y.3d 888, 890 [2007]). Specifically, the eventual emergence of a dangerous condition over time is not an affirmative act of negligence for which the City can be held liable (*see Yarborough*, 10 NY3d at 727 [2008]).

“Maps prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc., (‘Big Apple Maps’) and filed with the Department of Transportation serve as prior written notice of defective conditions depicted thereon” (*Katz*, 87 NY2d at 243). “Although the awareness of

one defect in the area is insufficient to constitute notice of a different particular defect which caused the accident, where there are factual issues as to the precise location of the defect that caused a plaintiff's fall and whether the defect is designated on the map, the question should be resolved by the jury" (*Reyes v. City of New York*, 63 AD3d 615, 655).

Here, the DOT records compel a conclusion that the City had no prior written notice. DOT conducted searches for records of several permits, inspections, and complaints. None of the permits revealed in the DOT search provide prior written notice, as permits issued by the City do not constitute prior written notice (*see Meltzer v. City of New York*, 156 AD.2d 134 [1st Dept 1989]). None of the inspections can provide the City with prior written notice because they resulted in a final passing condition or indicate no work was completed. Additionally, a review of the one hundred and thirty inspections from the DOT searches reveals that none relate to the condition alleged to have caused plaintiff's incident. In addition, the Big Apple Map did not give the City notice either as a review of the map provided with the motion reveals it to be entirely illegible (*D'Onofrio*, 11 NY3d at 585 [no evidence of written notice where symbol of Big Apple Map could not be interpreted]).

In sum, the facts and record evidence presented, establish that the City had no prior written notice of the dangerous condition. Additionally, plaintiff has not met her burden to show the City caused or created the condition alleged to have caused the incident, and the City has established its prima facie entitlement to summary judgment pursuant to § 7-201. In response to City's prima facie showing, plaintiff has failed to raise any triable issues of fact that would warrant determination by a finder-of-fact.

The Court has considered all of plaintiff's additional arguments, and finds them unavailing.

Accordingly, it is hereby,

ORDERED, that the Naparstek’s motion for summary judgment (motion sequence 001) is granted and the case against the Naparsteks is therefore dismissed; and it is further

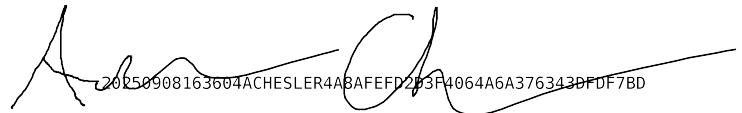
ORDERED, that Steinberg and Bartiromo’s motion for summary judgment (motion sequence 002) is denied and the case against those defendants is therefore not dismissed; and it is further

ORDERED, that City’s motion for summary judgment (motion seq is granted and the case against City is therefore dismissed; and it is further

ORDERED, that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; and it is further

ORDERED, that since the City is no longer a party to this action, the Trial Support Office shall reassign this action to the inventory of a non-City Part.

This constitutes the decision and order of the court.


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9/8/2025
DATE

ARIEL D. CHESLER, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE