

Panzer v City of New York

2025 NY Slip Op 33349(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 150411/2021

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

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SUSAN R. PANZER,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA-LONG ISLAND RAILROAD, NJ TRANSIT CORPORATION, VORNADO TWO PENN PROPERTY, L.L.C., MADISON SQUARE GARDEN ENTERTAINMENT, CORP., and MADISON SQUARE GARDEN SPORTS CORP. F/K/A MADISON SQUARE GARDEN COMPANY,

Defendants.

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INDEX NO. 150411/2021
MOTION DATE 06/18/2025
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

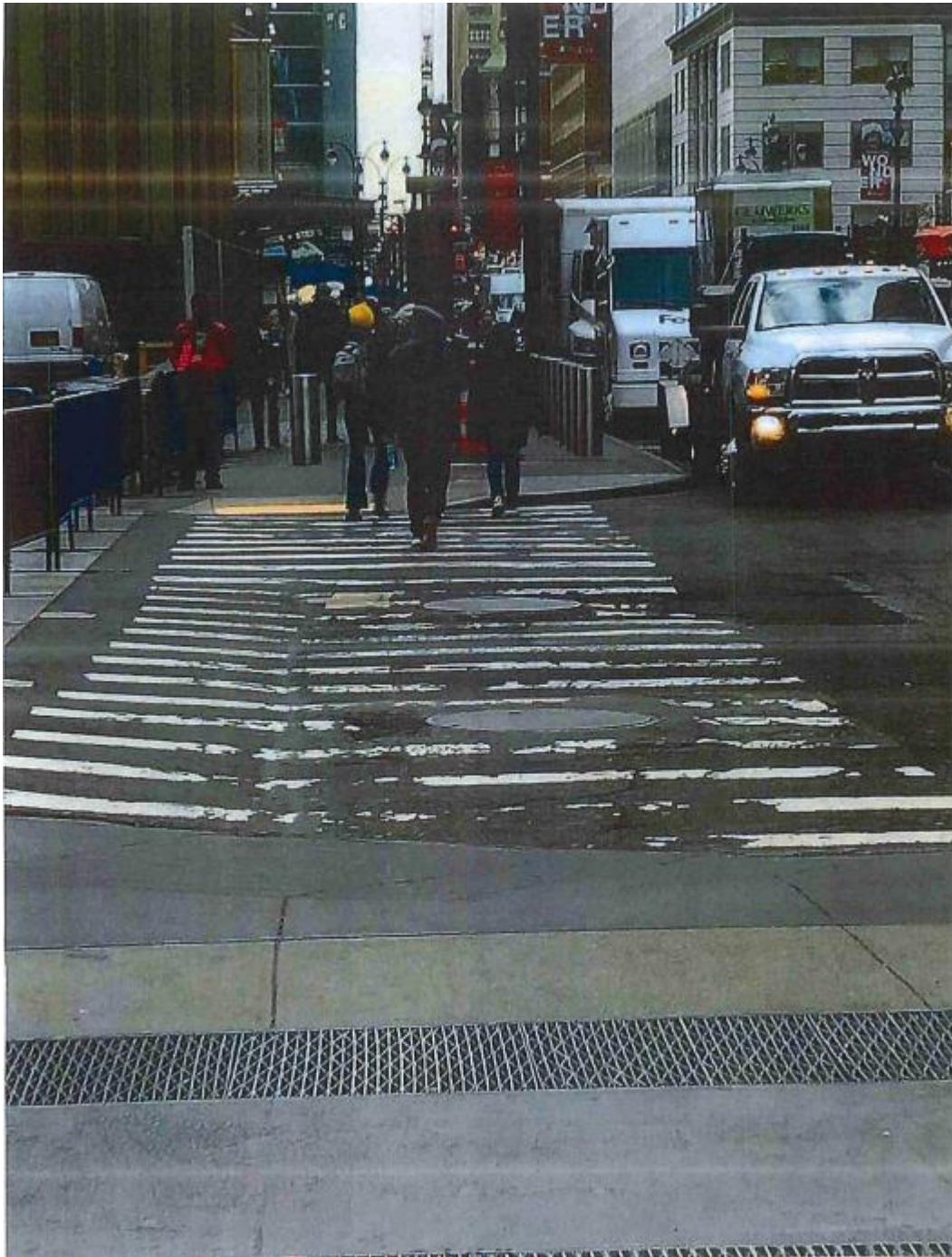
The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 73 - 89 were read on this motion to/for JUDGMENT - SUMMARY.

In this motion, defendant Vornado Two Penn Property, L.L.C. (Vornado) moves for summary judgement dismissing the complaint and any and all cross-claims by and against it. The motion is unopposed.

BACKGROUND

On October 31, 2019, the plaintiff, Susan R. Panzer, was using a crosswalk “on the south side of 33rd street between 7th and 8th avenues” when she stumbled and fell due to a pothole near a manhole (see Exhibit A in support of mot [NYSCEF Doc. No. 76], complaint ¶¶ 97- 98). Defendant Vornado is the alleged owner of the area where plaintiff stumbled and fell (*id.* ¶ 99). Photographs of the area were attached to the notice of claim:

(continued on next page)



(see Exhibit H in support of mot [NYSCEF Doc. No. 83], notice of claim).

In response, Vornado admitted that it owns the building located at 2 Penn Plaza, but denied ownership of crosswalk where plaintiff allegedly fell (see Exhibit B in support of mot [NYSCEF Doc. No. 77], Vornado's answer ¶¶ 12-13).

DISCUSSION

“To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party” (*Nellenback v Madison County*, — NY3d —, 2025 NY Slip Op 02263 [2025] [internal citations omitted]).

It has been well established that “[l]iability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises” (*Jackson v Board of Educ. of City of New York*, 30 AD3d 57, 60 [1st Dept 2006], quoting *Gibbs v Port of Auth. of N.Y.*, 17 AD3d 252, 254 [1st Dept 2005]). Here, Vornado has made a prima facie showing that it does not own, control, or maintain the area where plaintiff allegedly stumbled and fell.

Annie Leone, the property manager for Two Penn Plaza for roughly thirteen years, testified at her deposition that Vornado does not own any portion of the crosswalk and did not perform any repairs to that portion of the crosswalk (see Exhibit M in support of mot [NYSCEF Doc. No. 88], Leone EBT at 10, lines 19-21; at 21, line 22 through 22, line 3; at 26, lines 9-16).

Therefore, Vornado’s motion for summary judgment dismissing the complaint as against it is granted.

Because Vornado can no longer be held liable to plaintiff, any cross-claims of the co-defendants against Vornado that sound in common-law indemnification and contribution are dismissed by operation of law (see e.g. *Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the dismissal of the complaint in its entirety as against a defendant, the cross-claims against that defendant are also dismissed]).

Likewise, Vornado’s own cross-claims for common-law indemnification and contribution against the Transit Defendants are dismissed as academic (*Rogers v Rockefeller Group Intl., Inc.*, 38 AD3d 747, 750 [2d Dept 2007]).

CONCLUSION & ORDER

It is hereby **ORDERED** that the motion for summary judgement by defendant Vornado Two Penn Property, L.L.C. (Seq. No. 003) is **GRANTED**, and the complaint is severed and dismissed as against defendant Vornado Two Penn Property, L.L.C., with costs and disbursements to this defendant as taxed by the Clerk upon submission of an

appropriate bill of costs, and all cross-claims by and against this defendant are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in this defendant's favor accordingly; and it is further

ORDERED that the remainder of the action shall continue.



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<u>9/8/2025</u> DATE		<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
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