

Chambers v City of New York

2025 NY Slip Op 33379(U)

September 9, 2025

Supreme Court, New York County

Docket Number: Index No. 152783/2020

Judge: Hasa A. Kingo

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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. HASA A. KINGO **PART** **05M**

Justice

-----X

JOYCE CHAMBERS,

Plaintiff,

- v -

THE CITY OF NEW YORK, WELPA LLC, BROAD SPRING OWNERS INC.,

Defendant.

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INDEX NO. 152783/2020

MOTION DATE 09/09/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion for DISCOVERY.

In this personal injury action, Plaintiff Joyce Chambers (“Plaintiff”) seeks damages for injuries she purportedly sustained on December 26, 2018 when she tripped and fell on the sidewalk abutting the property located at 157 Spring Street, New York, New York (NYSCEF Doc No. 1, complaint). The sidewalk where she fell abuts a commercial retail space leased to defendant Sunglass Hut. Defendant Broad Spring Owners Inc. (“Broad Spring”) is the owner of the condominium building at the subject location.

During a deposition, a witness for Broad Spring testified that the portion of the sidewalk where Plaintiff fell was repaired by defendant the City of New York after the incident (NYSCEF Doc No. 77, aff in support ¶ 4). As of the filing of the motion, the City had not produced any records to Plaintiff indicating whether the City sent a citation to the building owners instructing them to make repairs to the sidewalk or billing the building owners for the repairs. Plaintiff contends that the deposition testimony and lack of notice raise questions regarding whether the City had some type of control, ownership, or maintenance responsibility for the sidewalk in question.

Citing these concerns, Plaintiff moves pursuant to CPLR § 3124 to compel the City to produce the following documents in discovery:

- Records related to Corrective Action Requests, Notices of Violations, and Notifications for Immediate Corrective Action for the sidewalk abutting the property located at 157 Spring Street, New York, NY10012, issued between the dates of December 26, 2018 and July 1, 2019; and

- Records related to inspections performed by THE CITY OF NEW YORK of the sidewalk abutting the property located at 157 Spring Street, New York, NY10012, between the dates of December 26, 2018 and July 1, 2019;
- Office of Construction Mitigation and Coordination records for the period of December 26, 2018 through July 1, 2019, for the repairs and billing information with regards to sidewalk abutting the property located at 157 Spring Street, New York, NY;
- Permits and applications for the period of December 26, 2018 through July 1, 2019, regarding the sidewalk abutting the property located at 157 Spring Street, New York, NY10012;
- Records related to complaints of defects in the sidewalk abutting the property located at 157 Spring Street, New York, NY10012 made between the dates of December 26, 2018 and July 1, 2019.

The City opposes the motion and argues that the records sought are immaterial and irrelevant because they have no bearing on the City's potential liability. The City cites to Administrative Code § 7-210, which provides that "it shall be the duty of the owner of real property abutting any sidewalk . . . to maintain such sidewalk in reasonably safe condition." The City further asserts that because the subject property is privately owned, it is undisputed that the property owner is responsible for maintaining the sidewalk pursuant to the Administrative Code. The City further contends that post-accident records cannot demonstrate that the City caused or created the subject condition, and that evidence of subsequent remediation is not discoverable or admissible in a negligence case.

On reply, Plaintiff objects to the City's opposition as untimely filed and reiterates his position that a material question of fact exists regarding why the City repaired the sidewalk absent any legal obligation to do so. Plaintiff further argues that the City permitted and sponsored multiple projects at the subject location in the year preceding Plaintiff's injury, including two sidewalk replacement projects sponsored by the New York City Department of Design and Construction, for which the City has not produced any records in discovery. Plaintiff contends that this further contributes to the question of whether the City had some type of control, ownership, or maintenance responsibility for the subject location.

Broad Spring joins in support of Plaintiff's motion and requests that the court disregard the City's opposition as untimely.

DISCUSSION

Pursuant to CPLR § 3101(a), "[t]here shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action." The words "material and necessary" are "liberally interpreted to require disclosure, upon request, of any facts bearing on a controversy which will assist in sharpening the issue at trial" (*Roman Catholic Church of Good Shepherd v*

Tempco Systems, 202 AD2d 257, 258 [1st Dept 1994]). The test is one of usefulness and reason (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). The trial court is invested with broad discretion to supervise discovery and to determine what is material and necessary (*id.*; *Madia v CBS Corp.*, 146 AD3d 424, 425 [1st Dept 2017]). Ultimately, it is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of admissible information bearing on the claims (*Gomez v State of New York*, 106 AD3d 870, 872 [2d Dept 2013]).

“If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article . . . the party seeking disclosure may move to compel compliance or a response” (CPLR § 3124). On a motion brought pursuant to CPLR § 3124, the burden is on the party seeking the disclosure to establish a basis for the production sought (*Rodriguez v Goodman, M.D.*, 2015 NY Slip Op 31412 [U], *5 [Sup Ct, NY County 2015]). “[T]he party challenging disclosure bears the burden of establishing that the information sought is immune from disclosure” (*Ambac Assurance Corp. v DLJ Mortg. Capital, Inc.*, 92 AD2d 451, 452 [1st Dept 2012]). Courts have found that a party is not required to respond to a discovery demand that is “palpably improper . . . [in that it is seeking] irrelevant information, or [is] overbroad and burdensome” (*Montalvo v CVS Pharm, Inc.*, 102 AD3d 843 [2d Dept 2013]).

Generally, “evidence of subsequent repairs is not discoverable or admissible in a negligence case” (*Hinton v City of New York*, 73 AD3d 407, 408 [1st Dept 2010], citing *Hualde v Otis Elevator Co.*, 235 AD2d 269, 269 [1st Dept 1997]). Courts have identified four limited exceptions to this rule, including (1) where there is an issue of maintenance or control; (2) where the discovery sought is to show that a particular condition was dangerous; (3) where alleged defective condition on the date of the alleged occurrence could not otherwise be proven; or (4) where the discovery sought is to ascertain the condition of the instrumentality that allegedly caused the plaintiff’s injuries, prior to any admitted subsequent modifications (*Cochin v Metropolitan Transit Authority*, 2015 NY Slip Op 32950 [U] [Sup Ct, NY County 2015] [internal citations omitted]).

A review of relevant cases indicates that courts have granted motions to compel the production post-accident records where fact evidence raises a question regarding whether or to what extent a party controlled or maintained the subject premises (*see Hyman v Aurora Contractors, Inc.*, 294 AD2d 229, 229 [1st Dept 2002] [evidence of post-accident safety measures was properly admitted at trial where jury’s apportionment of liability turned on finding of which defendant controlled area of construction site where injury occurred]; *Olivia v. Gouze*, 285 A.D. 762, 140 NYS2d 438 765 [1st Dept 1955], *affd* 1 NY2d 811, [1956] [evidence of post-accident repairs admissible as to control and maintenance where testimony and other proof indicated both storekeeper and building owner controlled premises]; *Hughes v Cold Spring Const. Co.*, 26 AD3d 858, 859 [4th Dept 2006] [State compelled to produce records regarding postaccident remedial measures, despite State’s general control over road construction project, questions existed regarding whether contractor exercised a sufficient degree of control to make changes to the traffic control devices in the construction area]).

Conversely, courts have denied such motions where the evidence presented raises no question regarding ownership of the property or legal obligation to repair (*see Stolowski v 234 E.*

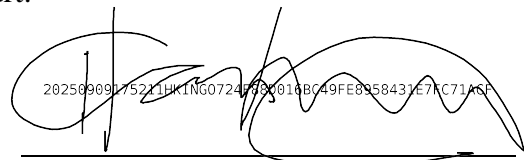
178th St. LLC, 89 AD3d 549, 549 [1st Dept 2011] [“Control is not an issue since defendant concedes that it owns the property”]; *Cacciolo v Port Auth. of New York*, 186 AD2d 528, 530 [2d Dept 1992] [“Since Otis conceded that it was responsible for the maintenance of the elevator in question pursuant to its service contract with the Port Authority, there was no issue of control or maintenance here”]; *Klatz v Armor Elevator Co.*, 93 AD2d 633, 637 [2d Dept 1983] [Control exception inapplicable where defendant was obligated to maintain and repair elevator under service contract with building owner]).

Here, Plaintiff offers no extrinsic evidence demonstrating that the City exercised control over the property prior to the accident, relying solely on the post-accident repair as a basis to suggest that issues of fact exist regarding control. However, it is undisputed that the building owner bears a nondelegable duty to repair and maintain the property, and there is no evidence that the City exercised control before Plaintiff’s injury. Under these circumstances, this case is more analogous to the latter set of circumstances exemplified in cases such as *Klatz v Armor Elevator Co.* (93 AD2d at 637). Consequently, evidence of post-accident repair is immaterial, and the motion must be denied. Accordingly, it is hereby

ORDERED that the instant motion is denied in its entirety; and it is further

ORDERED that, should the parties wish to explore settlement, they may contact the court by email at SFC-Part5@nycourts.gov, ensuring that all parties are copied on any such correspondence.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

9/9/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: