

**Sputz v Yeshiva Shareh Torah**

2025 NY Slip Op 33825(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 531693/2023

Judge: Lisa S. Ottley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS – PART 24

STELLA SPUTZ,

Plaintiff,

-against-

YESHIVA SHAREH TORAH a/k/a YESHIVA  
SHARE TORAH and CONGREGATION KAHAL  
YIREI HASHEM,

Defendants.

Mot. Seq. #s 4 and 5

Index # 531693/2023

**DECISION AND ORDER**

2025 SEP 25 A 4 36  
KINGS COUNTY CLERK  
FILED

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Summary Judgment and Cross-Motion to Preclude submitted on June 9, 2025.

Papers	Numbered
Notice of Motion and Affirmation .....	1&2 [Exh. A-0]
Notice of Cross-Motion and Affirmation.....	3,4 and5 [Exh. A-H]
Affirmation/Affidavit in Opposition.....	6 and 7
Reply Affirmations.....	8 and 9

Plaintiff commenced this action due to an accident which occurred on September 6, 2023, as a result of tripping and falling on the sidewalk abutting 1556 and 1560 53<sup>rd</sup> Street, Brooklyn, New York.

Defendants move for an order pursuant to CPLR 3212 granting summary judgment and dismissing the complaint in its entirety on the grounds that the plaintiff cannot identify what caused her to fall, the defendants did not create the alleged condition, negligently maintain the area or use the sidewalk in a special manner, and the alleged defect was open and obvious and too trivial to be actionable. Plaintiff cross-moves and opposes the defendants’ motion pursuant to CPLR 3126 for failure to comply with plaintiff’s requests for discovery, defendants’ failure to authenticate its video, and the existence of material issues of fact which preclude summary judgment from being granted.

Plaintiff’s Cross-Motion for Preclusion. The motion should be addressed by the Central Compliance Part, before the presiding Justice who issued the prior orders directing discovery. Therefore, the relief pursuant to CPLR 3126 requested in the cross-motion is respectfully referred to CCP and will not be decided by this Part.

### Defendants' Motion for Summary Judgment

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2<sup>nd</sup> Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action." See, Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. See, Marine Midland Bank, N.A. v. Dino v. Artie's Automatic Transmission Co., 168 A.D.2d 610 (2<sup>nd</sup> Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, CPLR 3212[b]; Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

Defendants argue that plaintiff is unable to identify what caused her to fall while she was walking down the middle of the sidewalk on 53<sup>rd</sup> Street towards 16<sup>th</sup> Avenue, without resorting to speculation. In a trip and fall case a defendant may establish its *prima facie* entitlement to judgment as a matter of law by submitting evidence that the plaintiff cannot identify the cause of his or her fall, which is fatal to the cause of action because a finding that the defendant's negligence, if any, proximately caused the plaintiff injuries would be based on speculation. See, Santiago v. Williams, 208 A.D.3d 604, 173 N.Y.S.3d 597 (2<sup>nd</sup> Dept., 2022). Here, viewing the evidence in a light most favorable to the plaintiff, the court finds that the defendants fail to establish, *prima facie*, that the plaintiff was unable to identify the cause of her fall without resorting to speculation. The plaintiff's deposition testimony states that the accident occurred when the front of her foot got stuck in the hole on the floor of the sidewalk and described it as a rectangle shape the size of a brick. However, defendants argue that the plaintiff initially tripped, as shown in the video (which plaintiff argues is inadmissible due to lack of authentication) on the concrete sidewalk abutting 1560 53<sup>rd</sup> Street, before the missing brick that she identified in her Summons and Complaint, discovery responses and deposition testimony. In opposition, the plaintiff argues that she was able to identify the cause of her fall and after viewing the video which was not previously available to her, that as she traversed defendants' sidewalk that her right foot struck a crack/depression/defect in the sidewalk before the missing brick causing her to lose balance and to stumble forward when her right foot came into contact with the hole from the missing brick in the sidewalk which caused her to fall to the ground. The court finds that the plaintiff was able to identify what caused her trip and fall without resorting to sheer speculation. See, Brachfield v. Sternlicht, 202 A.D.3d 742, 163 N.Y.S.3d 533 (2<sup>nd</sup> Dept., 2022).

As to the video submitted in support of the motion, the court finds that it has been authenticated by the plaintiff. See, Keene v. Rosas, 215 A.D.3d 938, 187 N.Y.S.3d 752 (2<sup>nd</sup> Dept., 2023), where the court held that the plaintiff while questioned at his deposition identified the video and testified that it accurately depicted the accident. Here, the plaintiff stated that when she viewed the video that she had a recollection of the accident and was able to state that there were two defects in the property that caused her to trip and fall. This

court notes, as stated earlier herein, that it makes no ruling as to whether the video should be precluded due to the defendants' failure to produce it during discovery demands made by plaintiff.

In addition, the defendants argue that summary judgment should be granted because the alleged defect was open and obvious and too trivial to be actionable. In determining whether a defect is trivial, and thus the property owner is not liable, the court must examine all the facts presented, including the width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury. See, Trincere v. County of Suffolk, 90 N.Y.2d 976, 665 N.Y.S.2d 615. In support of their motion for summary judgment defendants submit the deposition testimony of Mr. Elcheun Roth and Ms. Rachel Roth. Mr. Roth testified that the subject sidewalk flag was not uneven, and no hole or depression existed in the flag. Ms. Roth testified that she did notice cracks in the sidewalk abutting 1560 53<sup>rd</sup> Street, but no holes nor any uneven depressed areas in the sidewalk abutting her property in the past ten years. In opposition, plaintiff's affidavit states that there were two alleged defects in the sidewalk which she attributes to her fall: the first defect being a hole/depression in the sidewalk and the second being the hole from the missing paver, which is shown in photographs annexed to defendants' motion for summary judgment. Generally, the issue of whether a dangerous or defective condition exists on the property of another depends on the facts of each case and is generally a question of fact for the jury. See, Sturm v. Myrtle Catalpa, LLC, 140 A.D.3d 1130, 53 N.Y.S.3d 257 (2<sup>nd</sup> Dept., 2017). In the case at bar, after review of the defendants' testimony and photographs, they are insufficient to demonstrate, prima facie, that the alleged defects are trivial as a matter of law and therefore not actionable. In addition, the court finds that issues of fact have been raised by the plaintiff to preclude summary judgment from being granted.

Defendants also argue that they did not create the alleged condition, negligently maintain the area or use the sidewalk in a special manner. A defendant who moves for summary judgment in a trip and fall case has the initial burden of making a prima facie showing that it neither created the alleged hazardous condition, nor had actual or constructive notice of its existence for a length of time sufficient to discover or remedy it. See, Marchese v. St. Martha's Roman Catholic Church, Inc., 106 A.D.3d 881, 965 N.Y.S.2d 557 (2<sup>nd</sup> Dept., 2013). To meet this burden, the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff tripped. See, Marchese v. St. Martha's Roman Catholic Church, Inc., *supra*. Mr. Roth testified that he manages the building and that he also has his people who do day work, such as cleaning, repair work, snow removal and general stuff at the property. He also testified that Rachel Roth handles sidewalk maintenance, and that she has someone to clean outside and the front. Mr. Roth further testified that a book is not kept regarding notes for cleaning and repair work of the sidewalk property in front of 1556 nor 1560 53<sup>rd</sup> Street. Ms. Roth also testified as to the maintenance of the area, stating that 1560 does not have a superintendent and that she would call her son and ask him to send her two guys to remove snow. She testified that there are no maintenance logs regarding the sidewalk or work performed at 1560 53<sup>rd</sup> Street, and that she did not do any inspections of the property to make sure everything is safe, nor for 1556 53<sup>rd</sup> Street. Here, the defendant's testimony fails to establish

its entitlement to summary judgment since there is a lack of evidence as to its general cleaning or inspection practices.

After careful review of the moving papers and opposition thereto, the court finds that the defendants have failed to establish their entitlement to summary judgment as a matter of law. In moving for summary judgment, the defendants are obligated to present evidence which established its prima facie entitlement as a matter of law, thereby eliminating all material issues of fact as to their potential liability.


Based upon the foregoing, it is hereby

ORDERED that the defendants' motion for summary judgment is hereby denied, and it is further

ORDERED that plaintiff's cross-motion which relates to discovery and preclusion is respectfully referred to and made **returnable on October 15, 2025, at 9:30 a.m.**, before the Central Compliance Part for consideration.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York  
September 22, 2025

  
HON. LISA S. OTLEY  
HON. LISA S. OTLEY  
HON. LISA S. OTLEY

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