SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. CAROL SHARPE** **PART** **52M**

Justice

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INDEX NO. 159366/2018

CATHERINE LOVE,

Plaintiff,

MOTION DATE 04/30/2024, 05/22/2024, 05/28/2024

- v -

MOTION SEQ. NO. 004 005 006

THE CITY OF NEW YORK, CNY GROUP, LLC, CNY GROUP PRD, LLC, CNY 44 UNION SQUARE LLC, PARKSIDE CONSTRUCTION BUILDERS CORP., JOHN DOE,

DECISION + ORDER ON MOTION

Defendant.

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CNY GROUP, LLC, CNY GROUP PRD, LLC

Third-Party
Index No. 595256/2022

Plaintiff,

-against-

INFINITE SAFETY, QUALITY, AND CONSTRUCTION MANAGEMENT INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 193, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 208, 211, 243, 244, 245, 249, 252

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 194, 206, 209, 212, 214, 215, 216, 217, 225, 226, 227, 228, 229, 230, 248, 250, 253

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 195, 207, 210, 213, 218, 219, 220, 221, 222, 223, 224, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 246, 247, 251, 254

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

Upon the foregoing documents, second third-party defendant, Infinite Safety, Quality and Construction Management Inc.'s ("Infinite") motion for dismissal pursuant to CPLR 3211 and 3212 ("Mtn Seq. #4") is granted. Defendants CNY Group, LLC ("CNY"), CNY Group PRD, LLC ("CNY PRD"), and CNY 44 Union Square LLC's ("CNY 44")(collectively, "CNY Defendants") cross-motion for summary judgment is denied; defendant The City of New York's ("City") motion for summary judgment ("Mtn Seq. #5") is granted; and CNY Defendants' motion for summary judgment ("Mtn. Seq. #6") is denied.

This action was commenced by plaintiff filing a summons and complaint on October 9, 2018, against the City, CNY, CNY PRD, and "John Doe," for injuries she allegedly sustained after tripping and falling on a manhole cover while crossing the street near the Tammany Hall building at 44 Union Square East, at the intersection of Union Square East and East 17th Street, in New York County (the "Project") on October 3, 2017. Plaintiff alleges that an alternate walkway was created for pedestrians in the crosswalk of East 17th Street due to the nearby construction, but on the morning of the incident a dump truck involved with the Project was parked at an angle, blocking the pedestrian walkway so she had to cross in the street. She testified at her deposition that she fell when her foot hit the raised manhole cover. She described the area as the road being missing around the manhole. (NYSCEF Doc. #158, p. 46).

Plaintiff filed a second action against CNY Defendants, and "John Doe" on September 29, 2020, which arose out of the same alleged injury and set of facts. CNY Defendants commenced a third-party action against Parkside Construction Builders Corp. ("Parkside"), the general contractor hired to complete the Project, and later impleaded Infinite as a second third-party defendant. Issue was joined by the filing of answers by all defendants and third-party defendants except Parkside. The two actions were later consolidated by Order dated August 16, 2021

(NYSCEF Doc. #22), and CNY Defendants secured a default judgment against Parkside by Order dated October 11, 2022, for failure to appear in the action (NYSCEF Doc. #78).

Infinite filed Mtn Seq. #4 seeking summary judgment pursuant to CPLR 3212, and CPLR 3211(a)(1) and (7), dismissing all second third-party claims and cross-claims against it, on the grounds that plaintiff's alleged injury took place outside of the construction site of the Project for which it had been hired to provide site and fire safety management services; that Infinite was not responsible for remedying any safety issues for the Project as its role was advisory in nature; and that Infinite owed no duty to plaintiff as it did not own, control, or have responsibility for the alternate route created for pedestrians, or the manhole cover over which plaintiff allegedly tripped and fell. In support of its motion, Infinite filed various documents including, but not limited to, the affidavit and examination before trial (EBT) transcripts of its president, Eric Hirani; an affidavit of construction safety expert Michael Lawler; and the agreement between CNY 44 and Infinite for the Project.

In opposition, CNY Defendants filed a cross-motion for summary judgment pursuant to CPLR 3212 seeking contractual defense and indemnification from Infinite, and dismissal of any common-law claims, on the grounds that Infinite failed to identify and report the safety issue that led to plaintiff's alleged injury, triggering the indemnification provisions of their agreement. In support of its cross-motion, CNY Defendants filed copies of Infinite's daily safety logs, Infinite's incident report and photographs, and the EBT transcripts of the plaintiff and Jan Grimslan, the Vice President of Risk Management and Safety for CNY.

Defendant City filed Mtn Seq. #5, seeking summary judgment pursuant to CPLR 3212, on the grounds that it did not receive prior written notice of the condition of the manhole cover as required by Administrative Code § 7-201(c), and it did not cause or create the defect. In support

of its motion, City provided plaintiff's EBT transcript and photographs, and records searches and accompanying affidavits from the Department of Transportation (DOT), and the Department of Environmental Protection (DEP). Plaintiff and CNY Defendants filed opposition.

CNY Defendants filed Mtn. Seq. #6 seeking summary judgment, pursuant to CPLR 3212(a), on the grounds that they had no control over the manhole cover, and that it is defendant City who has exclusive control and is responsible for maintenance of the manhole cover. In support of its motion, CNY Defendants submitted plaintiff's EBT transcript, several photographs, and DEP records search results. Plaintiff and Infinite filed opposition.

Summary Judgment Standard

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." (*Dallas-Stephenson v Waisman,* 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Center,* 64 NY2d 851, 853 [1985]). "Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." (*Alvarez v Prospect Hosp.,* 68 NY2d 320, 324 [1986]). If the proponent makes the required *prima facie* showing, the burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial (CPLR 3212(b); *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]).

"It is well established that summary judgment may not be granted whenever the pleadings raise clear, well-defined and genuine issues." (*Falk v Goodman*, 7 NY2d 87, 89 [1959]). Upon a motion for summary judgment, the role of the court is issue finding, not issue determination. (*Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Esteve v Abad*, 271 AD 725, 727 [1st Dept 1947]). The motion should be

denied where different conclusions can reasonably be drawn from the evidence (*Sommer v Federal Signal Corp.*, 79 NY2d 540 [1992]). All evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party's favor (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 [1st Dept 2010]). Issues of credibility are to be resolved at trial, not by summary judgment (*Castillo v New York City Tr. Auth.*, 69 AD3d 487 [1st Dept 2010]).

CPLR 3211 Standard

Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to "accept the facts as alleged in the complaint to be true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law [internal citation omitted]," (*id.*) and "only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." (*Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 326 [2002]). "The motion should be granted where the essential facts have been negated beyond substantial question by the affidavits and evidentiary matter submitted." (*Blackgold Realty Corp. v Milne,* 119 AD2d 512, 513[1st Dept 1986], *affd* 69 NY2d 719 [1987]; *see Biondi v Beekman Hill House Apartment, Corp.*, 257 AD2d 76, 81 [1st Dept 1999]).

"In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint (*Rovello v Orofino Realty Co., supra,* at 635) and "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" [internal citation omitted]" *(Leon v Martinez*, 84 AD2d

at 88). "When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate." (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275, [1977]; *see also Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]("...affidavits submitted by the defendant will seldom if ever warrant the relief he seeks unless too the affidavits establish conclusively that plaintiff has no cause of action.")).

Mtn Seq. #4 and Crossclaim for Indemnity

Infinite seeks summary judgment and CPLR 3211 dismissal of the second third-party action against it brought by the CNY Defendants on the grounds that it was not responsible for creating an alternative pathway, it had no control or supervision over the party that allegedly blocked the pathway, nor did it have any responsibility or control over the manhole alleged to cause the accident.

CNY, the Construction Manager ("CM") for the Project entered into a Trade Contractor/Vendor Agreement with Infinite (the "Agreement") (NYSCEF Doc. #129), in which Infinite was retained by CNY to provide "a combination NYC DOB Licensed Site Safety Manager (SSM) and FDNY Construction Site Fire Safety Manager (FSM) or Site Safety Coordinator, present for all ongoing work... ." The Scope of Work in the Agreement provided that the SSM and the FSM "will be responsible solely to the Construction Manager (CM)," (NYSCEF Doc. #129, page 1) and that their responsibilities included, but were not limited to, identifying safety deficiencies and reporting them to the CM; daily inspections of the Project site; and completion of daily logs and deficiency notices as required. The Scope of Work also provided for reporting and notification responsibilities by Infinite to the Risk Manager/Safety Director at CNY "in the event

of an accident or incident occurring at the Project site involving bodily injury or property damage to a worker, member of the public, project site or an adjacent property owner," and that "[a]n Accident/Incident Report along with photographs must be completed and forwarded to the Risk Manager/Safety Director (Jan Grimslan) within 24 hours of the occurrence of an accident or incident involving bodily injury or property damage to a worker, member of the public, project site or adjacent property owner. The Report must be prepared to thoroughly document the occurrence and include an objective description of the facts, witness statements and related infonnation that can be evaluated as well as preventing similar incidents to occur. Follow-up reporting with additional shall be made as necessary." (NYSCEF Doc. #129, page 2, ¶4) The Agreement also states in pertinent part that:

> "…Infinite's loss control services are ad[v]isory in nature. …It is agreed that consultation, inspections or advisory by Infinite does not constitute any delegation to Infinite or assumption by Infinite of the Owner's [owner of Tammany Hall building] legal obligation. Infinite assumes no responsibility for management or control of the safety recommendations. Owner acknowledges that Infinite has no control or supervision over means or methods utilized by Owner, Construction Manager [CNY 44], or any trade contractors at the work site to maintain a safe work site or to correct any safety hazards." (NYSCEF Doc. 129, page 1, ¶2)

Infinite's safety expert, Michael Lawler, states in his affidavit that Infinite was only responsible for "mak[ing] safety observations related to construction operations within the confines of" the Project, has "no responsibility or authority related to the area identified by the plaintiff," and is "not liable for the plaintiff's claim…" (NYSCEF Doc. #128, ¶11). Eric Hirani, President of Infinite, testified that Infinite had no management or control responsibilities, and it was on the site to observe and provide information to assist "the parties in complying with New York City Department of Building ("DOB") regulations" (NYSCEF Doc. #124, ¶5).

CNY Defendants cross-moved for summary judgment on the grounds that Infinite had a contractual and common law duty to indemnify them. CNY Defendants claimed that Infinite failed to carry out its contractual responsibilities to inspect, advise, and report to CNY that a construction truck was blocking the pedestrian crosswalk, causing plaintiff to walk outside of the crosswalk.

The indemnification provision of the Agreement states:

> "To the fullest extent permitted by law, Vendor [Infinite] will defend, indemnify, and hold harmless Construction Manager [CNY 44], the Owner, and all those names as additional insureds…, along with their respective officers, directors, members, partners, agents, employers, employees, affiliates, parents and subsidiaries from and against any and all claims, liens, judgments, damages, losses and expenses including reasonable attorneys' fees and legal costs, arising in whole or in part and in any manner from any act, failure to act, omission, breach and/or default by Vendor and/or its officers, directors, agents, employees, subcontractors, vendors and/or suppliers of any tier including anyone directly or indirectly employed by any of them and for whose acts they may be liable in connection with the performance of this Agreement." (NYSCEF Doc. # 129, pp. 22-23)

Succeeding on a summary judgment motion for contractual indemnification is dependent upon the specific language in the contract, which should be clear and unambiguous as to the intent of the parties. "The promise [to indemnify] should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances…" (*Hooper Assocs., Ltd. v AGS Computs., Inc.,* 74 NY2d 487, 491 [1989]). The contractual language "must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" *(id.* at 491). "Where a person is under no legal duty to indemnify, his contract assuming that obligation must be strictly construed" (*Levine v Shell Oil Co.*, 28 NY2d 205, 211[1971]). "When the intent is clear, an indemnification agreement will be enforced even if it provides indemnity for one's own or a third party's negligence" (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 275 [2007]).

"To be entitled to common-law indemnification, a party must show: (1) that it has been held vicariously liable without proof of any negligence or actual supervision on its part; and (2) that the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work" (*Naughton v City of N.Y.*, 94 AD3d 1, 6 [1st Dept 2012]). "[I]n the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident for which the indemnitee was held liable to the injured party by virtue of some obligation imposed by law…" (*Correia v Prof'l Data Mgmt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999]; *see also Ramirez v Almah, LLC*, 169 AD3d 508 [1st Dept 2011]).

A safety management provider is not liable in common law negligence where it does not control or supervise the work site and where the written agreement provides that its responsibility was to provide safety inspections, hold safety meetings, report unsafe practices at the jobsite to the construction manager (*Martinez v 342 Prop. LLC*, 89 AD3d 468, 469 [1st Dept 2011][affirming the granting of summary judgment on the issues of negligence, contractual and common-law indemnity, and contribution where the site safety management service role was to advise on safety issues and it "lacked the control over the conduct of work at the project necessary to impose liability upon it under Labor Law § 200 or common-law negligence."]; *see Torres-Quito v 1711 LLC*, 227 AD3d 113 [1st Dept 2024][affirming the granting of summary judgment in the absence of evidence that the site safety manager had more authority than site safety or general supervisory authority]). "[F]ailure to correct any unsafe work does not constitute negligence because it did not have the authority to control or stop the work, and it did not exercise any supervisory control over plaintiff's work" (*Velez v LSG 105 W. 28th, LLC*, 236 AD3d 617, 618 [1st Dept 2025][affirming

the granting of summary judgment and the dismissal of contractual and common law indemnification, and contribution as there was no negligence]). "City Safety [the site safety manager] is entitled to dismissal of all claims for common-law indemnification against it because there is no evidence of negligence on its part in the record…City Safety's failure to identify and correct the unsafe work did not give rise to negligence, since City Safety's contract with Noble explicitly provided that its role on the project was solely in an "advisory capacity" and that it had no authority to supervise the contractors or to control or stop the work" (*Dejesus v Downtown Re Holdings LLC*, 217 AD3d 524, 526-527 [1st Dept 2023]). In the absence of any evidence of negligence, the common-law and contractual indemnification claims are also dismissed (*id.*).

Here, there is no negligence on the part of Infinite as it was at the Project in an advisory capacity without the authority to control or stop the work. Any reports and photographs prepared by Infinite are consistent with the Scope of Work when an accident occurs on an adjacent property and does not establish a duty. Without any evidence of negligence, all claims for contractual and common-law indemnity as well as contribution must be dismissed. Infinite established it is entitled to summary judgment and CNY Defendants failed to establish any triable issue of fact. Infinite's motion for summary judgment is granted and all claims against it are dismissed. There is no need to make a finding on the CPLR 3211 motion.

Mtn. Seq. #5

City moved for summary judgment on the grounds that it did not have written notice of a defective manhole pursuant to New York City Administrative Code §7-201(c) ("Admin Code"). Admin Code §7-201(c)(2) provides in pertinent part that:

> No civil action shall be maintained against the city…unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive

> such notice, or where there was previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency, or there was written acknowledgement from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

Admin Code §7-201(c)4 further provides that "[w]ritten acknowledgement shall be given by the department of transportation of all notices received by it." The acknowledgement requirement is sufficient to satisfy the Pothole Law where "[an]other agency is performing the function (normally performed by DOT) of remedying an unsafe condition in the roadway…" and "…a written statement showing that the city agency responsible for repairing a condition had first-hand knowledge both of the existence and the dangerous nature of the condition…" (*Bruni v City of N.Y.*, 2 NY3d 319, 325 [2004]).

The City has the initial burden of establishing that it did not have prior written notice of a defect (*see Yarborough v City of N.Y.*, 10 NY3d 726 [2008]). "Prior written notice of a defect is a condition precedent which plaintiff is required to plead and prove to maintain an action against the City" (*Katz v City of New York*, 87 NY2d 241, 243 [1995]). "The failure to demonstrate prior written notice leaves plaintiff without legal recourse against the City for its purported nonfeasance or malfeasance in remedying a defective sidewalk. Because this prior written notice provision is a limited waiver of sovereign immunity, in derogation of common law, it is strictly construed [internal citation omitted]" (*id.*). Prior written notice can be satisfied through the maps prepared by Big Apple, "[h]owever, verbal or telephonic communication to a municipal body that is reduced to writing does not satisfy the prior written notice requirement, even if the writing includes a service report" (*Carney v City of N.Y.*, 232 AD3d 535, 536 [1st Dept 2024]; *Harvey v Henry 85 LLC*, 171 AD3d 531 [1st Dept 2019], *lv. denied*, 33 NY3d 911 [2019]("service report that was the

result of a verbal or telephonic communication received through the City's 311 system, is insufficient to raise an issue of fact as to prior written notice."); *Stoller v City of N.Y.*, 126 AD3d 452 [1st Dept 2015]("records of citizen reports of two potholes in the area and FITS reports of repairs made to potholes in front of a building on Canal Street did not provide the City with prior written notice of the particular defect in the crosswalk where plaintiff fell."); *see Kapilevich v City of N.Y.*, 103 AD3d 548 [1st Dept 2013]). "[P]ermits issued to other parties do not show notice of the defective condition." (*Haulsey v City of N.Y.*, 123 AD3d 606, 607 [1st Dept 2014]). Here, City established that it did not have prior written notice of the defect that caused plaintiff's accident as is required by Admin Code §7-201(c)2 as none of the reports received and produced during the various searches satisfied the writing requirement.

Where City establishes that it lacked prior written notice under the Admin Code §7-201(c)2, the burden shifts to the plaintiff to demonstrate the applicability of one of two recognized exceptions to the prior written notice law: "that the municipality affirmatively created the defect through an act of negligence or that a special use resulted in a special benefit to the locality" (*Yarborough*, 10 NY3d at 728). The affirmative negligence in creating the defect is "limited to work by The City that immediately results in the existence of a dangerous condition" (*Bielecki v City of N.Y.*, 14 AD3d 301 [1st Dept 2005]); *Oboler v City of N.Y.*, 8 NY3d 888, 890 [2007])(summary judgment granted where "plaintiff presented no evidence of who last repaved this section of the roadway before the accident, when any such work may have been carried out, or the condition of the asphalt abutting the manhole cover immediately after any such resurfacing."). The repair must be close in time to have created the "immediate" dangerous condition (*see Trentman v City of N.Y.*, 162 AD3d 559, 559-560 [1st Dept. 2018])(summary judgment granted where "evidence that defendant repaired a defect several months before

plaintiff's accident does not provide a basis for an inference that the repair resulted in an immediately hazardous condition."); *Civic v City of N.Y.*, 215 AD3d 445, 446 [1st Dept 2023])("Plaintiff's claim that the City's alleged negligent repair of a defect at the location several months before the incident resulted in an immediate hazardous condition was speculative."). That "the defendant repaired a defect three months prior to the subject accident in the general vicinity of the plaintiff's fall does not provide a basis for an inference that the repair immediately resulted in the existence of a dangerous condition" (*Smith v City of New York*, 228 AD3d 472, 473 [1st Dept 2024]).

Here, City submitted records search results from DOT and DEP, including a Roadway Search Response for East 17th Street between Union Square East and Irving Place (NYSCEF Doc. #160), which show several repairs made in the vicinity of the Project, including a "Manhole broken out" in the north crosswalk of Union Square East and East 17th Street (*id.* at p. 989). However, this defect was repaired almost three months prior to the alleged incident and plaintiff has not provided any evidence that the repair created an immediate hazard. It is also not clear that this is the same manhole over which plaintiff allegedly tripped and fell. Plaintiff has failed to establish the exception to the notice requirement that any repair to the manhole cover, or the area around the manhole cover, resulted in an immediately hazardous condition.

Mtn Seq. #6

CNY Defendants seek summary judgment dismissing the action on the grounds that it had no control or maintenance over the manhole cover. CNY 44 concedes that it retained Parkside, which has defaulted in this action, as the general contractor for the Project. Among plaintiff's submissions was the accident report prepared by Infinite, which stated that four licensed flaggers who were at the intersection of Park Ave. and 17th Street reported that they observed plaintiff

rushing across the street when she tripped over the lip of the manhole cover, and a September 2017 google map picture.

"Not uncommonly, parties outside a contract are permitted to sue for tort damages arising out of negligently performed or omitted contractual duties" (*Palka v Servicemaster Mgmt. Servs. Corp.*, 83 NY2d 579, 586 [1994]). "There are triable factual issues as to whether the sidewalk encroachment constituted a special use by them, and as to whether the encroachment proximately caused plaintiff's harm by directing her toward the alleged defect [internal citation omitted]" (*Hunter v City of N.Y.*, 23 AD3d 223, 224 [1st Dept 2005]; *Coulton v City of N.Y.*, 29 AD3d 301 [1st Dept 2006]). Plaintiff has established that there are triable issues of fact as to the CNY defendants, including whether the presence of the truck in the crosswalk directed plaintiff to the alleged defect in the street.

Accordingly, it is hereby

ORDERED, that Infinite's motion for summary judgment is granted; it is further

ORDERED, that CNY Defendants' cross-motion for indemnity is denied; it is further

ORDERED, that the second third-party action is dismissed; it is further

ORDERED, that City's motion for summary judgment is granted; and it is further

ORDERED, that CNY Defendant's motion for summary judgment is denied.

This constitutes the Decision and Order of the Court.

E N T E R:

October 10, 2025
DATE

HON. CAROL SHARPE, J.S.C.
HON. CAROL SHARPE
J.S.C.

CHECK ONE:		CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
		GRANTED	[ ] DENIED		GRANTED IN PART	[X]	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE