SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ERIC CRESPO,

Plaintiff,

- v -

TRIUMPH CONSTRUCTION CORP., DELANEY ASSOCIATES, LP, THE CITY OF NEW YORK, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Defendant.

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INDEX NO. 152431/2020

MOTION DATE 02/04/2025, 02/24/2025, 02/28/2025

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83

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

Triumph Construction Corp. ("Triumph"), moved to dismiss the action pursuant to CPLR 3211, on the ground that their records show they performed work around 38th Street, not 34th Street where plaintiff fell (Mtn Seq. #1). Delaney Associates, LP ("Delaney") moved to dismiss the action pursuant to CPLR 3211, on the ground that they performed work at 33rd Street, not at 34th Street where plaintiff fell (Mtn Seq. #2). Consolidated Edison Company of New York, Inc. ("ConEd") moved to dismiss the action pursuant to CPLR 3211, on the grounds that it did not maintain the handicap ramp, and the work it performed in the area was in the roadway, not the

handicap ramp (Mtn Seq. #3). Plaintiff filed opposition to ConEd's summary judgment motion and ConEd filed a reply. None of the parties filed opposition to Triumph's and Delaney's summary judgment motions. As such, Triumph's and Delaney's motions are granted, and ConEd's motion is granted.

Plaintiff commenced this personal injury action alleging that on December 8, 2018, as he was crossing from the southeast corner of 34th Street and 9th Avenue to the southwest corner of 34th Street and 9th Avenue, New York, New York, he slipped and fell on a slippery substance as he was walking on the handicap ramp in the vicinity of the sidewalk in front of 423 9th Avenue. Issue was joined by the filing of the defendants' respective answers.

In support of its motion, ConEd submitted, among other exhibits, plaintiff's deposition testimony, ConEd's records, and the affidavit and deposition of transcript of ConEd's witness, Margarita Rodriguez.

Plaintiff testified at his 50-H hearing and deposition that he fell on a greasy substance. He testified at his deposition that when his foot touched the handicap ramp it slipped, and he fell. After he got up, he saw that the floor looked slippery, greasy, and had a shine to it, but it did not get on his pants when he fell (NYSCEF Doc. #77, pg. 57). He did not know if there was any grease on the ground around the ramp (NYSCEF Doc. #77, pg. 66). He testified that later that day, on his way home from work, he took pictures which showed the area was cordoned off with tape and barrels that had the name Triumph stenciled on them. He also described that there were metal plates that were more towards the middle of the street on 9th Avenue, closer to 35th Street.

Margarita Rodriguez, a Specialist Record Searcher employed by ConEd testified that the records show that ConEd was issued three permits from the New York City Department of Transportation. One permit, which was valid from June 17, 2018, to June 28, 2018, was for work

to be done 15 feet south of the south curb of West 34th Street, and 1 foot east of the west curb of 9th Avenue, to open the roadway or sidewalk to repair electric communications (NYSCEF Doc. #78, pg. 21-22). ConEd was issued another permit from May 5, 2018, to June 3, 2018, to open the roadway or sidewalk to repair gas around 20 feet south of the south curb of 34th Street and 15 feet of the east curb of 9th Avenue. A third permit was valid from August 11, 2015, to August 24, 2015, to open the roadway or sidewalk to regrade hardware protected. She testified that records showed that ConEd was issued various violations in the area around 34th Street and 9th Avenue in June, September, November and December of 2018, including asphalt blocking the gutter and issues concerning the steel plates.

"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]). For a summary judgment motion to be denied, the non-moving party must provide evidence showing that triable issues of fact exist. "To defeat summary judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions, of fact or of law, are insufficient" (*Mallad Constr. Corp. v Cty. Fed. Sav. & Loan Ass'n,* 32 NY2d 285, 260 [1973]; *Freedman v Chem. Constr. Corp.*, 43 NY2d 260, 264 [1977]["[I]t is elementary that conclusory assertions will not defeat summary judgment. The opponent of a properly made summary judgment motion must present evidentiary facts sufficient to raise a triable issue of fact [internal citation omitted]"]. If there are no material triable issues of fact, summary judgment must be granted (*see Sillman,* 3 NY2d at 404).

"A plaintiff in a slip-and-fall case must "demonstrate that the defendant created the condition which caused the accident, or that the defendant had actual or constructive notice of the condition" (*Kraemer v K-Mart Corp.,* 226 AD2d 590). To constitute constructive notice, "a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (*Gordon v American Museum of Natural History,* 67 NY2d 836, 837 [1986]; *Kershner v Pathmark Stores, Inc.*, 280 AD2d 583 [2d Dept 2001]). "[N]either a general awareness that litter or some other dangerous condition may be present [internal citation omitted] nor the fact that plaintiff observed other papers on another portion of the steps approximately 10 minutes before his fall is legally sufficient to charge

defendant with constructive notice of the paper he fell on." (*Gordon v American Museum of Natural History,* 67 NY2d at 838; *Piacquadio v Recine Realty Corp.*, 84 NY2d 967 [1994]; *Falcon v State of NY*, 226 AD3d 534, 535 [1st Dept 2024]["A defendant's general awareness that a dangerous condition may be present is legally insufficient to constitute constructive notice of a particular condition which caused a claimant's injury."]).

Evidence cannot be based on speculation. "[O]ne opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient [internal citations omitted]" (*Zuckerman*, 49 NY2d at 562). The affirmation of an attorney who has no personal knowledge of how the accident occurred is insufficient to raise a triable issue of fact (*id.* at 563; *Matter of Jaime v City of NY*, 41 NY3d 531 [2024]; *Pomerantz v Culinary Inst. of Am.*, 2 AD3d 821, 821-822 [2nd Dept 2003]["The plaintiff's contention that the condition may have been created by a student who spilled grease or oil is purely speculative"]).

ConEd established that it is neither an owner nor a lessee of the sidewalk handicap ramp and therefore had no duty to maintain the ramp. Plaintiff failed to raise a triable issue of material fact as to ConEd's liability. The photographs submitted showed water pooling at the corner where plaintiff fell. That alone is insufficient to raise a triable issue of fact as plaintiff did not fall in a pool of water as his clothes were not soiled or wet. He fell on a slippery area and has not offered evidence in admissible form as to what caused the area to be slippery, nor was he able to say if it was on the ground surrounding the ramp as well. Plaintiff's counsel's argument that the water from

the road contained oils and greases which could have been deposited on the ramp is speculative as no such evidence was presented, nor is he an expert on such issues. Accordingly, it is hereby

ORDERED, that the complaint against Triumph is dismissed; it is further

ORDERED, that the complaint against Delaney is dismissed, it is further

ORDERED, that the complaint against ConEd is dismissed; it is further

ORDERED, that the action be severed with respect to Triumph, Delaney, and ConEd, and shall continue against The City of New York only; it is further

ORDERED, that the caption of this proceeding is amended as follows, and all future filings shall bear the amended caption:

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Eric Crespo,

Plaintiff, Index No: 152431/2020

-against-

The City of New York,

Defendant.

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; it is further

ORDERED, that Triumph shall serve a copy of this Order with Notice of Entry within twenty (20) days of the date of this Decision and Order, and file proof of service within ten (10) days of service, on all parties and the Clerk of the General Clerk's office, who is directed to update the Court's records to reflect the amended caption; and it is further

ORDERED, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or if it is an e-file case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the "E-filing" page on the court's website).

This constitutes the Decision and Order of the Court.

ENTER:

October 23, 2025
DATE

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

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