

**Aristy v BNS Bldgs. LLC**

2025 NY Slip Op 34131(U)

October 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 527196/2019

Judge: Richard J. Montelione

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At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 16th day of October 2025.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

**DECISION  
and  
ORDER**

-----X  
JANIL E. ARISTY,

Plaintiffs,

-against-

BNS BUILDINGS LLC,

Defendants.  
-----X

Index No.: 527196/2019  
Mot. Seq. No.: 4

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
Defendant’s Notice of Motion/Affidavits/Affirmations/Exhibits.....	66-73
Plaintiff’s Answering Affirmation//Exhibit.....	74-81
Plaintiff’s Reply Affirmation.....	82
Other.....	

MONTELIONE, RICHARD J., J.

This action was commenced by filing the summons and complaint on December 13, 2019, alleging, inter alia, that plaintiff suffered personal injuries from a trip and fall on June 14, 2019, at 5:00 pm due to a defect on the sidewalk adjacent to 200 Highland Blvd., Brooklyn, NY, a property owned by defendant. Issue was joined by filing the answer on February 6, 2020.

Defendant moves for summary judgment alleging that it had no notice of any defect in the sidewalk and plaintiff cannot identify the specific area of the sidewalk where she fell. Defendant argues that plaintiff states where she fell to be general in nature—at the “corner” of Highland Boulevard and Miller Street (NYSCEF #71, T. 19:24-25, T. 20:2-11), and tripped when plaintiff’s foot “hit something.” (NYSCEF #71, T. 24:16-20).

The defendant’s conclusory statement that the sidewalk had no defects, without any objective indication that no area of the sidewalk had a height differential of more than one-half inch or that no gaps or traps existed or that the pitch of the sidewalk was in compliance with the New York City Building Code, is insufficient to meet the defendant’s burden of showing it had

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no constructive notice of any defective condition of the sidewalk given the inspections performed by defendant's employee.

The defendant also argues that Plaintiff cannot specify where she fell and only describes the general area where she fell as an "uneven" surface of the sidewalk. The court searched the record and found the following in deposition testimony of the plaintiff (NYSCEF #71, T. 53:14-25):

MR. MENSCHING: Please mark this as Defendant's Exhibit A.

[The photograph was hereby marked as Defendant's Exhibit A for identification, as of this date.]

Q. Does that photograph indicate or show the area where your accident happened?

A. Yes.

NYSCEF #71, T. 54:2-25:

Q. In looking at the photograph, do you see the building, the red brick building, on the left?

A. Yes.

Q. Is that the building that you were walking in front of when your accident happened?

A. Yes, I was passing by there.

Q. As you were passing by that building, was the building on your right or left as you passed by?

A. The right, right, right, right.

Q. As you look at the photograph, if you look straight ahead in the photograph, do you see what looks like a person on a motorbike or bike on the right side behind that parked vehicle?

A. If I can see it?

Q. Yes.

A. No, from this standpoint I can't see it.

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Q. You don't see the guy on the bicycle over there behind the white car?

A. The picture is moving a lot.

NYSCEF #71, T. 55:2-25:

Q. I'm sorry, okay. If you look at the photograph looking straight down the sidewalk, there appears to be a street right there?

A. Yes.

Q. Is that the street Miller that you talked about earlier, is that the street you came down?

A. Yes.

Q. Is that where you turned the corner and began walking down the sidewalk?

A. Yes, that is Miller [,] and I made a right on Highland Boulevard.

Q. In looking at this picture, do you see specifically the area where you said your foot tripped on the sidewalk, do you see where that is in this photograph?

A. Yes.

Q. Can you describe for me where in the photograph it is?

A. This area here, right side. [Indicating]

Q. We can't see what you are pointing to.

NYSCEF #71, T. 56:2-25:

Was there an area towards the center of the sidewalk?

A. Yes.

Q. I am going to point to an area on the sidewalk. Do you see my pen, was it towards the center in this area?

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A. Can you move the pen a little bit.

Q. [Complying]

A. You see that division there?

Q. Right here? (Indicating)

A. More to the left.

Q. [Complying]. Around the area where the sidewalk changes from one color to the other, right around the area where the division is between the two sidewalk pieces?

A. Yes, right now where the pencil is right now, that side.

Q. It was right around this area where the pen is now?

NYSCEF #71, T. 57:2-25:

A. That area, that same one.

Q. It wasn't over on this side, it was over this side?  
(Indicating)

A. Yeah, it is not in the area where the sidewalk has been fixed. It's in the area exactly where you have your pencil right now.

MR. MENSCHING: For the record, the area where the pen is now is a little bit closer to the building portion of the sidewalk.

Q. A little bit closer toward the building than the other side; correct?

A. Correct.

Q. You were walking from the corner where I am putting the pen, from the corner you were walking in this direction before the accident, you came from here and were walking down the sidewalk right there; correct? [Indicating]

A. Yeah, I was going up Miller and got right on Highland Boulevard because it

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NYSCEF #71, T. 58:2-14:

takes you straight to the park.

Q. The area you were walking, I am going to show you with the pen, you were coming from this direction at the end of the block, that corner, and walking past the building on your right, past the entranceway to the building and then your accident happened where the pen is now, a few flags of concrete past the entranceway to the building. Right about here? (Indicating)

A. Yes.

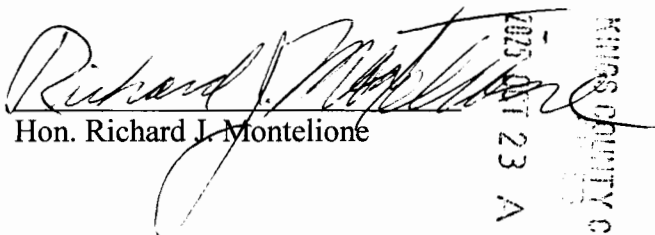
The plaintiff provided testimony as to where she fell on a photo introduced by defendant’s counsel as “where the pen is now” as the location of her trip and fall. Simply because a photo was not marked by defendant’s counsel or by plaintiff who was not asked to mark the area where she fell, does not suggest that the plaintiff cannot pinpoint where she fell. Defendant has failed to meet its burden of showing that either plaintiff did not know where she tripped or that the area where she tripped was not defective or contained a trivial defect (*See Genutis v 555 Dekalb Ave., LLC*, 241 AD3d 878, 880 [2d Dept 2025], “[A] defendant may establish, prima facie, that an alleged defect was trivial as a matter of law and, thus, not actionable, even without submitting an objective measurement of the alleged defect’s dimensions. However, ... a defendant moving for summary judgment who does not submit an objective measurement of the alleged defect has greater difficulty and often fails to demonstrate triviality as a matter of law.” (internal quotation marks and citations omitted)

The defendant having failed to meet its burden of proof makes it unnecessary to consider the plaintiff’s opposing papers. (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]).

Based on the foregoing, it is

ORDERED that the defendant’s motion for summary judgment is DENIED.

This constitutes the decision and order of the Court.

  
Hon. Richard J. Montelione  
KINGS COUNTY CLERK  
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