SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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ROSA PEREZ,

Plaintiff,

- v -

LYFT, INC.,NYC BIKE SHARE, LLC,LYFT BIKES AND SCOOTERS, LLC,THE CITY OF NEW YORK

Defendant.

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INDEX NO. 150278/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to DISMISS.

Defendants Lyft, Inc. ("Lyft"), Lyft Bikes and Scooters, LLC ("LBS"), and NYC Bike Share, LLC (together, the "Lyft Defendants") move, pursuant to CPLR §§ 3211(a)(1) and (a)(7), to dismiss the complaint and all cross-claims as against them, with prejudice, and for entry of judgment in their favor. For the reasons that follow, the motion is granted.

BACKGROUND AND PROCEDURAL HISTORY

This personal-injury action arises from Plaintiff Rosa Perez's ("Plaintiff") alleged August 12, 2024 trip-and-fall "at or near 100 Gold Street, New York, New York," which Plaintiff attributes to "an unprotected and empty tree-well without a fence or barrier," abutting a public sidewalk where a Citi Bike docking station is situated. In her Verified Bill of Particulars and at a GML § 50-h hearing, Plaintiff identified the tree well (i.e., depressed soil/ungoverned opening) as the precise defect on which she fell; she did not identify any defect in the docking station or in the sidewalk flags themselves. The parties submitted pleadings, photographs of the locus, the 50-h transcript excerpts, and attorney affirmations; the City also referenced its DOT bike-share agreement.

ARGUMENTS

The Lyft Defendants argue dismissal is warranted because (i) the alleged defect is an empty/depressed tree well, not the bike station or the sidewalk; (ii) they owed no duty respecting the tree well and did not own, operate, maintain, repair, inspect, control, or make special use of any tree well at the location; and (iii) Plaintiff's own submissions (pleadings, photos, 50-h testimony) conclusively sever any causal or duty nexus between the docking station and the tree-well condition. In the alternative, if the motion were deemed premature, they seek leave to renew after discovery.

Plaintiff opposes, contending the motion is premature and that discovery is needed into ownership/maintenance responsibilities, including contracts between the City and the Lyft Defendants. She invokes the "special use" doctrine, asserting the docking station privatized the sidewalk, narrowed the pedestrian corridor, and "directed" her path toward the unguarded tree well. She also argues that an employee affirmation is not "documentary evidence" within CPLR § 3211(a)(1).

The City opposes dismissal as premature, pointing to provisions in the DOT bike-share agreement concerning siting, installation, and restoration of disturbed pavement, and arguing Lyft's role in siting/installation should be explored in discovery even if Lyft has no obligation for the tree well *per se*. At the same time, the City acknowledges Lyft "may not be responsible for the subject tree well area," but urges that the docking station's procurement/placement/installation could have contributed to Plaintiff's injuries and therefore merits further factual development.

DISCUSSION

On a motion under CPLR § 3211(a)(7), the court accepts the pleaded facts as true, affords the pleader every favorable inference, and determines only whether those facts, if proven, fit within a cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Bare legal conclusions or allegations contradicted by incontrovertible submissions need not be credited (*Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003]).

Under CPLR § 3211(a)(1), dismissal lies where "documentary evidence" utterly refutes the factual allegations and conclusively establishes a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). Affidavits typically are not "documentary evidence," while judicial records, contracts, and like materials may qualify (*Fontanetta v John Doe 1*, 73 AD3d 78, 84–86 [2d Dept 2010]).

As pleaded and shown by Plaintiff's own submissions, this is a tree-well case. The alleged dangerous condition is the empty/unfenced, depressed soil within the tree well. No defect is alleged in the docking station hardware or the sidewalk flag itself; nor does Plaintiff allege that work performed to install the docking station altered the tree well or created the depressed-soil condition.

New York City's sidewalk statute, Admin. Code § 7-210, imposes on abutting property owners a duty to maintain sidewalks in a reasonably safe condition, but the Court of Appeals has squarely held that tree wells are not part of the "sidewalk" for purposes of § 7-210; absent proof that an abutting owner created the defect or made special use, the City remains the responsible party for tree wells (*Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 521–22 [2008]). Here, the building at 100 Gold Street is municipally owned; in ordinary course, duties respecting the tree well abutting that building thus run to the City, unless non-City actors created the defect or assumed control.

Plaintiff's theory against the Lyft Defendants rests on "special use"—i.e., that the docking station privatized/narrowed the pedestrian way and directed her path toward the tree well. The special-use doctrine imposes an obligation to maintain "the area of special use so as not to raise

the specter of peril to the traveling public," (*Santorelli v City of New York*, 77 AD2d 825, 826 [1st Dept 1980]), and can attach when an appurtenance is installed for the user's benefit such that a defect in the appurtenance itself (or a defect directly caused by that special use) injures a passerby (*Kaufman v Silver*, 90 NY2d 204, 207 [1997]; *D'Ambrosio v City of New York*, 55 NY2d 454, 462 [1982]; *see also Tyree v Seneca Ctr.–Home Attendant Program, Inc*., 260 AD2d 297, 297–98 [1st Dept 1999]).

Those principles do not save the pleading here. Even crediting that the docking station occupies sidewalk space, Plaintiff alleges no defect in the station, no failure to maintain the station, and no facts showing that the station's installation disturbed or created the separate tree-well depression. The claimed hazard is the unguarded tree-well opening—an area concededly outside the station's footprint and beyond the "area of special use" itself (*see McCutcheon v Nat'l City Bank of N.Y.*, 265 AD 878 [2d Dept 1942][special use liability lies where the special appurtenance is itself defective, or where the sidewalk defect is directly caused by the special use]). Plaintiff's reliance on *Curtis v City of New York*, 179 AD2d 432 (1st Dept 1992), is unavailing: there, newspaper racks allegedly defined and directed the pedestrian's path into the sidewalk defect. Here, Plaintiff identifies no comparable "channeling" into the tree well, and her own testimony attributes the fall to not seeing the grass-covered hole while walking behind a companion.

In short, the pleaded facts—even with every favorable inference—do not establish that the Lyft Defendants owed a duty respecting the tree-well condition, that they created or exacerbated that condition, or that any special use of the sidewalk by the docking station extended to the separate and municipal tree-well cavity recognized in *Vucetovic*.

Plaintiff and the City urge that discovery might reveal contracts or siting/installation facts supporting Lyft's responsibility. But discovery is not a license to search for a duty not plausibly alleged. On a CPLR § 3211(a)(7) motion, the question is whether the pleaded facts, assumed true, state a claim (*Leon*, 84 NY2d at 87–88). The current pleading anchors liability to a tree-well defect and posits, in conclusory fashion, that a nearby docking station narrowed the sidewalk and "directed" Plaintiff's path. That conclusory linkage, unaccompanied by factual allegations that the docking station (or its installation) altered the tree well or created the depression, does not fit within special-use or negligence theories against the Lyft Defendants (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co*., 98 NY2d 144, 151–52 [2002][conclusory allegations insufficient]).

Nor does the City's DOT agreement change the analysis at the pleading stage. Even assuming Lyft (or an affiliate) assisted in siting and was obligated to restore disturbed pavement after installation, the pleadings here do not assert a pavement defect and do not allege facts that the siting/installation disturbed the tree well or caused the depression. Without nonconclusory allegations tethering the station work to the tree-well condition, the request to keep the Lyft Defendants in the case "just in case" discovery turns something up is precisely what CPLR § 3211 forbids (*see Guggenheimer*, 43 NY2d at 275 [court looks to legal sufficiency; unsupported contentions do not require disclosure]).

Because the court grants dismissal under CPLR § 3211(a)(7), it need not rely on CPLR § 3211(a)(1). The court notes, however, that Plaintiff's own submissions (pleadings, photos, 50-h testimony) consistently identify the tree well—not the station or sidewalk flag—as the causative

defect, and thus reinforce the absence of any pleaded duty or causal nexus running to the Lyft Defendant (*see Goshen*, 98 NY2d at 326 [documentary evidence may defeat conclusory allegations]). The court does not treat employee affidavits as "documentary evidence," but the outcome remains the same under (a)(7) without those affidavits.

Accordingly, it is

ORDERED that the motion of defendants Lyft, Inc., Lyft Bikes and Scooters, LLC, and NYC Bike Share, LLC to dismiss the Complaint and all cross-claims as against them is granted pursuant to CPLR § 3211(a)(7); and it is further

ORDERED that the complaint and all cross-claims are dismissed with prejudice as against Lyft, Inc., Lyft Bikes and Scooters, LLC, and NYC Bike Share, LLC; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this decision and order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office; and it is further

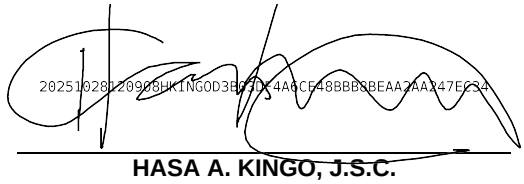
ORDERED that service of this decision and order upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of Lyft, Inc., Lyft Bikes and Scooters, LLC, and NYC Bike Share, LLC, with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the action shall continue as against the remaining defendant, The City of New York; and it is further

ORDERED that the remaining parties shall jointly contact the court by email at SFCPart5-Clerk@nycourts.gov and SFC-Part5@nycourts.gov, with all counsel copied, for the purpose of scheduling a settlement conference.

This constitutes the decision and order of the court.



10/28/2025
DATE

HASA A. KINGO, 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**