

Vargas v 265 E. 7th St. Corp.

2025 NY Slip Op 34419(U)

November 19, 2025

Supreme Court, New York County

Docket Number: Index No. 155898/2021

Judge: Denis Reo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENIS REO PART 65
Acting Justice

CARMEN SALVADOR VARGAS,
Plaintiff,

INDEX NO. 155898/2021
MOTION DATE 05/19/2025
MOTION SEQ. NO. 004

- v -

265 EAST 7TH STREET CORP., 267 EAST 7TH STREET
CORP.,
Defendant.

DECISION + ORDER ON
MOTION

265 EAST 7TH STREET CORP.
Plaintiff,

Third-Party
Index No. 595504/2022

-against-

267 EAST 7TH STREET CORP.
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55,
56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 76, 77, 78, 80, 83, 84, 85, 86, 91, 93, 94, 95, 96,
101, 104, 105, 106, 108, 112

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

In this action arising out of an alleged trip and fall on a sidewalk, defendant 265 East 7th
Street Corp. (265) moves pursuant to CPLR § 3211 [a] [7] and CPLR § 3212 for an order
dismissing plaintiff Carmen Salvador Vargas's (plaintiff) complaint on the ground that
documentary evidence establishes that plaintiff's testimony is demonstrably false and fabricated
with respect to the time, place and manner of her alleged accident. 265 also moves pursuant to
CPLR § 3212 for an order granting it summary judgment and dismissing plaintiff's complaint on
the ground that it bears no liability and has no responsibility for plaintiff's alleged accident.

Finally, 265 moves to dismiss plaintiff's complaint pursuant to CPLR § 3126 for plaintiff's purported perjury and failure to disclose prior relevant medical treatment. Plaintiff opposes 265's motion. Defendant 267 East 7th Street Corp. (267) cross-moves for summary judgment dismissing 265's cross-claims for indemnification and contribution. 265 opposes the cross-motion.

265's Motion for Summary Judgment

In support of its motion, 265 argues that plaintiff's complaint should be dismissed because plaintiff testified at her deposition that the weather at the time of her accident on February 19, 2021 was "very good" and "sunny" whereas NOAA weather records for Central Park on the date of the accident indicate that there was snow and freezing rain in below freezing temperatures for several hours before the alleged 2:00 pm time of accident. 265 contends that plaintiff's denial of snow and freezing rain on the date of the alleged accident proves that plaintiff's claim is fabricated. 265 also argues that plaintiff's failure to seek medical treatment for at least thirty-four (34) days following the alleged accident is further evidence of fabrication.

265 also moves for dismissal of plaintiff's complaint, or an order precluding plaintiff from offering evidence at trial, on the ground that plaintiff repeatedly perjured herself during her deposition testimony by denying relevant pre-accident complaints, injuries, treatment or diagnostic testing to her neck, back, knees and shoulders. 265 contends that plaintiff's pre-accident medical records from Mt. Sinai Hospital and Ryna Health establish that plaintiff committed perjury in an attempt to prevent discovery of her prior conditions, treatment and diagnostic testing.

Next, 265 argues that the sidewalk defect which plaintiff alleges she tripped over is a trivial defect of approximately one (1) inch or less for which 265 cannot be held liable. 265's

engineer, Robert Fuchs (Fuchs), who avers that he measured and inspected the sidewalk on April 14, 2025, contends that the difference in elevation between the adjoining sidewalk flags where plaintiff claims she tripped was approximately one inch, as shown in the plaintiff's photographs taken five (5) days after the accident. Fuchs further contends that his inspection of the sidewalk revealed a height difference of approximately $7/8$ to $1^{3/8}$ inches in the area where plaintiff testified that she fell. 265 further argues that there were no contributing lighting, weather or pedestrian traffic issues potentially rendering the sidewalk defect actionable. Finally, 265 argues that it did not create or have notice of a defective sidewalk condition.

The legal standard for summary judgment is well-settled. Pursuant to CPLR § 3212(b), a court shall grant summary judgment if the moving party demonstrates, through admissible evidence, that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 476 NE2d 642, 487 NYS2d 316 [1985]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 NE2d 572, 508 NYS2d 923 [1986]). The movant must make a prima facie showing of entitlement to judgment by establishing the absence of any triable issue as to any material fact. Once this showing is made, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of a genuine issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557, 404 NE2d 718, 427 NYS2d 595 [1980]). Speculative or conclusory assertions are insufficient to defeat summary judgment. On a defendant's motion for summary judgment, the plaintiff is entitled to all reasonable inferences in her favor and the court should not pass of issues involving credibility (*Rodriguez v Parkchester South Condominium, Inc.*, 178 AD2d 231, 232 [1st Dept 1991]).

With these principles in mind, 265 is not entitled to summary judgment based upon plaintiff's testimony regarding the weather conditions at the time of her alleged accident. CPLR § 4528 states "[a]ny record of the observations of the weather, taken under the direction of the United States weather bureau, is prima facie evidence of the facts stated." Weather Bureau records are self-authenticating if the requirements of CPLR § 4540 are met (*Sangiaco v State of New York*, 13 Misc3d 1246(A) [Court of Claims, 2006]). 265 has not submitted the certification required by CPLR § 4540[a], the climatological records submitted by 265 in support of its argument that it was snowing, not sunny, at the time of plaintiff's accident is inadmissible (*id.*). Even assuming that the climatological records were admissible, since plaintiff sufficiently identified the location of her fall her testimony regarding the weather conditions at the time of her accident presents credibility issues for the jury's determination (*see Reid v City of New York*, 230 AD3d 1043, 1044 [1st Dept 2024]). Similarly, plaintiff's deposition testimony about a lack of prior injuries and/or treatment to areas of the body she claims were injured in this accident also raises questions of credibility which are not appropriately addressed on a motion for summary judgment. A fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process so serious that it undermines the integrity of the proceeding (*Taveras v Tuick-It-Away Assocs., L.P.*, 2025 NY Slip Op 06148 [1st Dept 2025]). Based on the record presently before the court, it cannot be said that plaintiff's deposition testimony regarding the weather conditions at the time of her trip and fall or her testimony regarding prior injuries rises to the heightened level of fraud on the court. It is for the fact finder to determine plaintiff's credibility when she is subject to cross-examination under oath.

With respect to the 265's trivial defect argument, 265 failed to demonstrate its prima facie entitlement to judgment as a matter of law. 265 did not provide any evidence that the alleged height differential between the sidewalk flags where plaintiff tripped was less than one half inch and thus not actionable under Administrative Code § 19-152 a matter of law (*Trinidad v Catsimatidis*, 190 AD3d 444, 445 [1st Dept 2021]). Rather, 265's expert accepts plaintiff's contention, based upon a photograph taken by plaintiff five (5) days after the accident, that the height differential where plaintiff alleges that she fell was at least one inch. The conclusion of 265's expert that a one-inch height differential is not actionable because it is commonly present on sidewalks, especially in New York City, does not satisfy 265's burden.

Finally, 265 has failed to establish that it lacked notice of the alleged sidewalk defect. The testimony of 265's former treasurer, Frédéric Levrat, that he never noticed a height differential in the sidewalk while walking on it for several years prior to the accident is insufficient. 265 has not offered any evidence as to when the sidewalk was last inspected, if ever, and a jury could reasonably infer from plaintiff's photograph that the defective condition was there for a sufficient length of time for 265 to have discovered and remedied it (*Solomon v Diego Beekman Mut. Hous. Dev. Fund Corp.*, 190 Ad3d 660 [1st Dept 2021]; *see also Gartenberg v Supreme Co. I LLC*, 189 AD3d 540, 540-541 [1st Dept 2020]).

Accordingly, 265's motion for summary judgment is DENIED.

267's Cross-Motion for Summary Judgment

Note of issue in this matter was filed on March 19, 2025. Therefore, motions and cross-motions for summary judgment were required to be filed on or before May 19, 2025, per the June 29, 2022 preliminary conference order of the Honorable Shlomo Hagler. 267's cross-motion was not filed until May 28, 2025. 267 offers no excuse for the untimeliness of the cross-

motion and, therefore, has not established the good cause necessary to permit the court to consider it. However, a cross-motion for summary judgment made after the expiration of the statutory period or the period established by a court order may be considered, even in the absence of good cause, where a timely motion has been made seeking relief “nearly identical” to that sought by the cross-motion (*Fahrenheit v Security Mut. Ins. Co.*, 32 AD3d 1326, 1328 [1st Dept 2006]). Here, 265’s motion for summary judgment is addressed to plaintiff’s negligence cause of action while 267’s cross-motion seeks dismissal of 265’s cross-claims for indemnification and contribution. Since the court’s search of the record is limited to only those causes of action or issues that are the subject of the timely motion for summary judgment (*see Dunham v Hilco Constr. Co.*, 89 NY2d 425, 429-430, 676 NE2d 1178, 654 NYS2d 335 [1996]), the court cannot consider 267’s untimely cross-motion to dismiss 265’s claims for indemnification and contribution. The cross-motion is, therefore, DENIED.

Accordingly, it is hereby

ORDERED that defendant 265 East 7th Street Corp’s. motion for summary judgment and defendant 267 East 7th Street Corp.’s cross-motion for summary judgment are denied.

Denis Reo

11/19/2025 DATE					DENIS REO, A.J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE