

**Gist v Ponce Bank**

2025 NY Slip Op 34444(U)

November 21, 2025

Supreme Court, New York County

Docket Number: Index No. 152244/2024

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M**

*Justice*

-----X

VERA GIST,

Plaintiff,

- v -

PONCE BANK, PRESTIGE MANAGEMENT, INC., CITY OF  
NEW YORK

Defendant.

-----X

INDEX NO. 152244/2024

MOTION DATE 07/10/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, Defendant the City of New York (the “City”) moves for an order pursuant to CPLR § 3212 granting summary judgment to the City and dismissing Plaintiff Vera Gist’s (“Plaintiff”) complaint and cross-claims against the City. Plaintiff, Co-Defendant Ponce Bank (“Ponce Bank”), and Co-Defendant Prestige Management, Inc. (“Prestige”) oppose the motion. For the reasons stated herein, the City’s motion is denied.

**BACKGROUND**

Plaintiff commenced this personal injury action on March 12, 2024, to recover damages allegedly sustained when Plaintiff tripped and fell (NYSCEF Doc No. 1). Specifically, Plaintiff alleges that on December 13, 2022, she was near the M106 bus stop located between East 106th Street and Third Avenue when a defective condition caused her to fall (*id.* ¶¶ 66, 67). Plaintiff alleges that the City, Ponce Bank, and Prestige negligently maintained the premises (*id.* ¶¶ 66, 67).

On April 15, 2024, the City joined issue by service of its answer (NYSCEF Doc No. 6). Ponce Bank joined issue by service of its answer on May 10, 2024 (NYSCEF Doc No. 7). Prestige joined issue by service of its answer on September 16, 2024 (NYSCEF Doc No. 8). On April 7, 2025, Plaintiff filed a request for a preliminary conference (NYSCEF Doc No. 23).<sup>1</sup> The City filed the instant motion for summary judgment on July 10, 2025 (NYSCEF Doc No. 25).

The City contends that summary judgment is warranted because it does not own the property adjacent to where Plaintiff fell and the City had no prior notice of the allegedly defective

<sup>1</sup> Plaintiff contends that before the City filed the instant motion she served the City with a verified bill of particulars, a response to the City’s combined demands, and Plaintiff’s combined demands but has not received any discovery responses from the City (NYSCEF Doc No. 40, Ravinthiran aff’ ¶ 5).

condition (NYSCEF Doc No. 26). In support of its motion, the City proffers pleadings, affirmations, a property deed, and records maintained by the New York City Department of Transportation (“DOT”) (NYSCEF Doc No. 32-5).

Plaintiff, Ponce Bank, and Prestige oppose the City’s motion. Plaintiff opposes the City’s motion as premature because there has been no exchange of discovery (NYSCEF Doc No. 40, Ravinthiran aff’ ¶¶ 5, 6, 13-7). Plaintiff contends that the instant motion is the first she has been apprised of the DOT records despite serving discovery demands “nearly a year ago” (*id.* ¶ 13). Plaintiff also argues that because she fell near the M106 bus stop, that there are questions of fact regarding ownership and/or maintenance responsibilities for the subject location that were not resolved by the City’s motion (*id.* ¶¶ 14-7). Next, Plaintiff argues that there are questions of fact regarding whether the City had prior written notice of the allegedly defective condition because the Big Apple Map proffered by the City “clearly depicts multiple defective conditions at the subject location including ‘[e]xtended section of raise or uneven sidewalk, [o]bsruction protruding from sidewalk and extended section of broken, misaligned, or uneven curb” (*id.* ¶¶ 22-4).

Ponce Bank adopts Plaintiff’s arguments instead of advancing its own (NYSCEF Doc No. 42). Finally, Prestige opposes the City’s motion on similar bases as Plaintiff and Ponce Bank (NYSCEF Doc No. 51). Specifically, Prestige argues that the City failed to meet its prima facie burden because “the condition of the bus stop and whether the City performed any repair work on it, or the adjoining sidewalk is relevant” and the parties are entitled to discovery on these issues (*id.* ¶ 3). Prestige contends that the presence of various fixtures on the sidewalk, including, “a bus stop pole, bus shelter, embedded grate, street-light pole, and fire hydrant” demonstrates a clear issue of fact regarding the City’s duty that was not addressed by the City’s motion (*id.* ¶¶ 3, 5, 21-41). Prestige also highlights the fact that Plaintiff has not even identified the exact location where the accident is alleged to have occurred or even the condition that purportedly caused her injuries (*id.* ¶ 31). Finally, Prestige contends that despite being served demands, the City failed to produce any documents or respond to any demands prior to making the motion and the City’s motion is the first that it has been apprised of DOT records (*id.* ¶¶ 14, 27).

In reply, the City argues that its “motion was timely under CPLR § 3211[a][1]” and that such documentary evidence demonstrates that the property in question is owned by Franklin Plaza Apartments, Inc. and not the City (NYSCEF Doc No. 44, Sheerin aff’ ¶¶ 4, 5). The City also reiterates its position that it did not have the requisite prior written notice of the allegedly defective condition (*id.* ¶ 7).

## DISCUSSION

At the outset, the court notes that the City’s notice of motion and affirmation in support clearly identifies the motion as one for summary judgment pursuant to CPLR § 3212 (NYSCEF Doc No. 25, 26). Thus, although the City has submitted a reply that purports to address a motion to dismiss under CPLR § 3211(a)(1), the court declines to construe the motion in that manner and deems the arguments offered in support of that theory irrelevant (NYSCEF Doc No. 44, Sheerin aff’ ¶ 4 [“Firstly, the City’s motion was timely under CPLR § 3211[a][1] [ . . . ] [a]ccording to CPLR §3211[a][1] [ . . .]”). Accordingly, the court will analyze the City’s motion under the

standard for summary judgment pursuant to CPLR § 3212 as noticed by the City (NYSCEF Doc No. 25, 26).

Pursuant to CPLR § 3212(b), a motion for summary judgment “shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the [c]ourt as a matter of law in directing judgment in favor of any party” (CPLR § 3212[b]). “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]). To be a “material issue of fact” it “must be genuine, bona fide and substantial to require a trial” (*Leumi Financial Corp. v Richter*, 24 AD2d 855 [1st Dept 1965]). The movant’s burden is “heavy,” and “on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). “A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010][internal quotation marks and citation omitted]).

To maintain a cause of action in negligence, “a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom” (*Pasternack v Lab’y Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). In the absence of a duty, there can be no liability (*Pasternack*, 27 NY3d at 825). It is well established that owners of real property have a duty to maintain their property in a reasonably safe condition (*Mejia v New York City Transit Auth.*, 291 AD2d 225, 225–26 [1st Dept 2002]). Under the Administrative Code of the City of New York § 7-210, the “abutting property owner has a duty to maintain the public sidewalk” (*McCormick v City of New York*, 165 AD3d 565, 565 [1st Dept 2018]). However, “the City continues to be responsible for maintaining any part of the sidewalk that is within a designated bus stop location” (*McCormick*, 165 AD3d at 565; *Phillips v Atl.-Hudson, Inc.*, 105 AD3d 639, 639 [1st Dept 2013] [“Since it is clear that the area where plaintiff fell is a designated bus stop maintained by the City, even after enactment of Administrative Code of the City of New York § 7–210, the motion court properly granted the College defendants’ motion”]). In addition to that portion of the sidewalk, the City is also responsible for “the roads [and] curbs” attendant to its bus stops (*Shaller v City of New York*, 41 AD3d 697, 698 [2d Dept 2007]; *Nunez v the City of New York*, 2025 WL 2946580, at \*2 [Sup Ct, NY County 2025] [“A bus stop is not delimited to the roadway where buses operate but includes the sidewalk where passengers board and disembark from the bus” (*Bednark v City of New York*, 127 AD3d 403, 404 [1st Dept 2015]).

In this instance, the City failed to meet its *prima facie* burden. There court is persuaded by the record before it as well as the arguments advanced by Plaintiff, Ponce Bank, and Prestige that there are substantial questions of fact with respect to where Plaintiff fell, the defective condition that caused her to fall, and who if anyone is responsible for the area. The documents offered by the City in support of its motion demonstrate that the City does not own the abutting premises (NYSCEF Doc No. 27-35). However, the City’s ownership of the abutting premises is not in dispute and the City’s motion is altogether silent regarding its duties, if any, to the M106 bus stop as alleged by Plaintiff (NYSCEF Doc No. 1, 27). As such, on this record and without even so much

as a photograph demarcating where Plaintiff fell, there is simply no way to determine which party, if any, has a duty to Plaintiff.

In *Guante v City of New York* (182 AD3d 456 [1st Dept 2020]), the Appellate Division, First Department, held that “the motion court properly denied defendants’ motion as premature since discovery had not been completed [and] on the record presented, there [was] no way to determine whether Plaintiff fell within a designated bus stop” (*Guante v City of New York*, 182 AD3d 456, 456 [1st Dept 2020]). Similarly, in *McCormick v City of New York* (165 AD3d 565 [1st Dept 2018]), on Plaintiff’s motion for summary judgment, the Appellate Division, First Department, held that the motion, which was supported by photographs, as well as an admission from the City that it owns the bus stop in the photograph, was insufficient because “a triable issue of fact exists as to whether the part of the sidewalk where plaintiff fell is within a designated bus stop that the City is required to maintain (*McCormick*, 165 AD3d at 565–66). Here, too—where the evidentiary record before the court is even more limited—there is no principled basis on which to determine whether the City owed a duty to Plaintiff. Accordingly, the City’s motion is denied.

Therefore, it is

ORDERED that Defendant the City of New York’s motion is denied; and it is further

ORDERED that the Clerk shall set this matter down for a preliminary conference in the Differentiated Case Management Part on the next available date pursuant to its regular calendaring practice.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

11/21/2025  
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE