

**MacDonald v City of New York**

2025 NY Slip Op 34811(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 509020/2016

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

**At an IAS Term, Part 15 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of December 2025.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
DIANNE MACDONALD,

Plaintiff,

-against-

THE CITY OF NEW YORK, ALAN SCLAR and DARA SCLAR,

Defendants.  
-----X

**HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.**

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: Seq. 8: 110 – 120, 132 – 135, 140 – 141  
Seq. 9: 122 – 123, 124 – 130, 136 – 138, 142

Defendant The City of New York moves for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiff’s Complaint and all cross claims against them (Seq. No. 8).

Defendant Alan Sclar cross moves for an Order, pursuant to CPLR 2221, to renew and reargue their prior summary judgment motion (Seq. No. 4), which was denied by this Court on December 6, 2022, and upon renewal/reargument, to grant summary judgment in his favor (Seq. No. 9).

Plaintiff opposes both motions. Defendant The City of New York also submitted opposition to Defendant Sclar’s cross motion.

Plaintiff commenced this action on May 31, 2016, asserting claims of negligence against the City and homeowner Alan Sclar. Plaintiff alleges that she sustained injuries by slipping and

falling on ice on a sidewalk on March 1, 2015. The location of Plaintiff's fall was a sidewalk abutting property owned and occupied by Sclar.

Dealing first with Defendant Sclar's cross motion (Seq. No. 9), this is the third dispositive motion made by Defendant Sclar. In the decision and order dated December 6, 2022, this Court held that summary judgment was "denied *with prejudice* upon the grounds that the movant has not shown as a matter of law that he did not cause and create the condition." Based on the submissions attendant to those motions, the "condition" at issue was old ice. The Court expressly held that Defendant Sclar was "precluded from making another summary judgment motion."

A motion for leave to reargue pursuant to CPLR 2221 (d), "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion," must be made within 30 days of the prior decision and order. To the extent that the movant restates their previous position and argues "the decision of the court was in error or should have been denied with [sic] prejudice to renew after the completion of party depositions," they have failed to make a timely motion for reargument, and that part of their motion is denied.

A motion for leave to renew pursuant to CPLR 2221 (e) does not have such time constraints, but it requires a showing of "new facts not offered on the prior motion that would change the prior determination" and "reasonable justification for the failure to present such facts on the prior motion" (*see* CPLR 2221 [e]; *Rowe v NYCPD*, 85 AD3d 1001 [2d Dept 2011]).

"Generally, successive motions for summary judgment are not permitted," and the court may only entertain such a motion if it is "substantively valid and the granting of the motion will further the ends of justice and eliminate an unnecessary burden on the resources of the courts." (*Verizon New York, Inc. v Supervisors of Town of N. Hempstead*, 169 AD3d 740, 744 [2d Dept

2019] [internal quotation marks and citations omitted].) “Successive motions for summary judgment should not be made based upon facts or arguments which could have been submitted on the original motion for summary judgment” (*Hillrich Holding Corp. v BMSL Mgt., LLC*, 175 AD3d 474, 475 [2d Dept 2019]).

Here, the movant has not presented any new or additional facts which would change the determination on the prior motion. Although movant offers transcripts of depositions which were not held at the time of their two pre-discovery motions, as noted by Plaintiff in opposition, the movant does not cite to any testimony from Plaintiff that is materially different from her previously available 50-H hearing. At her 50-H, Plaintiff unequivocally testified that the sidewalk “had ice on the ground, *and* it started snowing” and has consistently held that position. Further, there are no newly discovered facts within Alan Sclar’s testimony, e.g., his general practice of hiring “kids from around the neighborhood” to clear snow, which were not available to the movant on the prior motion. None of the offered “new” testimony alters the Court’s prior determination; there remain issues of fact with respect to whether Sclar created or exacerbated the claimed previously existing icy condition prior to Plaintiff’s fall on March 1, 2015.

In the absence of new facts and reasonable justification for failure to include them in the prior motion, Defendant Sclar’s motion seeking leave to renew the summary judgment motion is **denied**.

Turning to the new summary judgment motion of the City of New York (Seq. No. 8), a moving defendant has the burden to “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) “Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to

produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 314 [2024], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

The City argues that there is no evidence they created the alleged icy condition through an affirmative act of negligence, because the area where Plaintiff fell was approximately 50 feet away from the crosswalk and intersection normally maintained by the City. The City submits testimony from a Department of Sanitation employee stating that no employee or independent contractor engaged in snow/ice removal from the sidewalk where Plaintiff fell, only at intersection crosswalks and in front of bus stops, schools, and churches. Additionally, Plaintiff testified that she fell on the sidewalk “about 50 feet” from the crosswalk in question, and she identified the part of the sidewalk where she fell in a photograph at least 1.5 or 2 car lengths away from the pedestrian ramp. The location of the fall was the sidewalk abutting co-defendant Sclar’s home, and he testified regarding his usual practice of clearing the snow around his property.

In opposition, Plaintiff cites to records from February 22, 2015 and February 24, 2015 showing the City removed snow from the crosswalk and pedestrian ramps on those dates. The Department of Sanitation employee testified that they would clear six-foot pathways from the side street to avenue, from one ramp to the other. Plaintiff argues that issues of fact remain as to where this snow was placed and whether the City “contributed to the mountain of ice” that Plaintiff slipped on by moving it to the middle of the sidewalk where her accident occurred.

Based on evaluation of these submissions, Plaintiff has not raised a genuine, triable issue of fact with respect to whether the City’s prior snow removal efforts caused or created the alleged “old ice” condition. Plaintiff argues that snow the City removed from the crosswalk and

pedestrian ramp may have been placed at the location of her accident, but this is based on conjecture and speculation rather than any evidence in the record. As noted by the movants in reply, Plaintiff's testimony and photographic evidence established that her fall occurred on a sidewalk abutting co-defendant Sclar's home, 50 feet from the crosswalk pathway. The City employee testified snow and ice are deposited in grassy patches or in "a designated area where there's no walking," which does not describe the location of Plaintiff's fall.

The City also argues they are not liable under the "storm in progress" doctrine. "Under the so-called 'storm in progress' rule, a property owner will not be held responsible for accidents occurring as a result of the accumulation of snow and ice on its premises until an adequate period of time has passed following the cessation of the storm to allow the owner an opportunity to ameliorate the hazards caused by the storm." (*Ryan v Beacon Hill Estates Coop., Inc.*, 170 AD3d 1215, 1215-1216 [2d Dept 2019] [internal citations omitted]). As discussed above, Plaintiff contends that the condition which caused her fall was "old ice . . . covered with fresh snow," as a result of prior accumulation and negligent snow removal efforts, so this rule is not applicable (*see Hyun Kyung Oh v Sky View Towers Holding, LLC*, 167 AD3d 725, 726 [2d Dept 2018]).

Notwithstanding, the City movants have established prima facie that they were not responsible for clearing snow from the area where the fall occurred, and they did not undertake any prior snow removal efforts that exacerbated the condition. Plaintiff's argument that excess snow/ice may have been moved to the location of her fall from the public intersection is wholly speculative, unsupported by the record, and fails to raise a genuine issue of fact as to the City's liability.

For this reason, the Court finds that the City is not liable for the alleged snow/ice condition that caused Plaintiff’s March 1, 2015 fall, and their motion for summary judgment is **granted**.

Accordingly, it is hereby:

**ORDERED** that the City’s motion (Seq. No. 8) for summary judgment is **granted**; and it is further

**ORDERED** that Defendant Alan Sclar’s motion (Seq. No. 9) to renew or reargue the December 6, 2022 decision is **denied**; and it is further

**ORDERED** that the action is transferred to a non-City part; and it is further

**ORDERED** that the caption is amended to read

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

-----X  
DIANNE MACDONALD,

Plaintiff,

-against-

ALAN SCLAR and DARA SCLAR,

Defendants.  
-----X

Ther Clerk shall enter judgment in favor of THE CITY OF NEW YORK.

This constitutes the decision and order of this Court.

**ENTER.**



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**Hon. Consuelo Mallafre Melendez  
J.S.C.**