SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ANNA GORDON,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, STATEN ISLAND FERRY

Defendant.

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INDEX NO. 157807/2019

MOTION DATE 06/11/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, defendants the City of New York ("City") moves on behalf of itself and defendants the New York City Department of Transportation ("DOT), and the State Island Ferry ("Ferry") (collectively, "Defendants") pursuant to CPLR § 3212 for summary judgment to dismiss the complaint. Plaintiff Anna Gordon ("Plaintiff") opposes the motion. For the reasons set forth herein, the motion is denied.

BACKGROUND

In this personal injury action, Plaintiff seeks to recover damages for injuries she allegedly sustained on September 23, 2018, while she was a passenger aboard the Senator John J. Marchi ("Marchi"), a Staten Island Ferry vessel (NYSCEF Doc No. 25, plaintiff's deposition transcript at 16–22, 25–28). At her deposition, Plaintiff testified that her injury occurred when a heavy steel weather-deck door suddenly closed on her arm, causing a fracture (*id.*).

Plaintiff thereafter timely filed Notices of Claim with all three Defendants, and a hearing pursuant to General Municipal Law § 50-h was held on March 6, 2019 (NYSCEF Doc No. 1, complaint ¶¶ 9-12). On August 9, 2019, Plaintiff commenced this action by filing a summons and complaint (NYSCEF Doc No. 1, complaint). Issue was joined on September 9, 2019, when the City served an answer on behalf of all Defendants (NYSCEF Doc No. 20, affidavit of service). The parties proceeded to discovery, and Plaintiff filed the Note of Issue on February 22, 2025 (NYSCEF Doc No. 15, note of issue).

The City now moves pursuant to CPLR § 3212 for summary judgment to dismiss the complaint. The City argues that Defendants are entitled to summary judgment because they did not have actual or constructive notice of the alleged condition, and they did not cause or create the

alleged condition. In support of their motion, the City first relies on the testimony of Jerry Veiga, a Staten Island Ferry Mate employed by the DOT (NYSCEF Doc No. 17, Circharo affirmation in support ¶ 9). The City notes, at the outset, that Veiga testified that prior to the date of Plaintiff's alleged injury, there had never been any incidents aboard the Marchi in which high winds caused doors to slam shut on anyone, nor were there high winds on the date of the incident (id. ¶ 9). Veiga further testified that there had never been any accidents involving the weather-deck doors on the Marchi, and that there were no known issues or maintenance needs with respect to the door at issue prior to the incident (*id*.).

Veiga also testified concerning DOT records produced in discovery, including an Event Report Form and an Event Tracking System entry related to Plaintiff's alleged injury, the Marchi deck logbook, and certain work orders (*id*. ¶¶ 9, 16–19). The City asserts that none of these records indicate that the weather-deck doors were defective or in need of maintenance, and that an inspection conducted after Plaintiff's alleged injury revealed that the doors were in good working order and equipped with appropriate warning signage. The City further asserts that the work orders produced in discovery reflect prior issues with a different set of doors aboard the Marchi, not the doors involved in Plaintiff's alleged incident (*id*. ¶ 20). Finally, the City contends that the weather conditions on the date of Plaintiff's alleged injury did not warrant the implementation of severe weather protocols, which would have required the doors to be tied down and secured to restrict passenger access (*id*. ¶ 21).

In opposition, Plaintiff argues that her testimonial evidence that the door "unexpectedly and violently" slammed shut, "quickly," with "extreme force" raises a question of fact regarding whether the door was in good working order at the time of the injury (NYSCEF Doc No. 33, Kheyman affirmation in opposition ¶¶ 13, 32). Plaintiff also submits an expert opinion by safety consultants, Drs. William and Anthony Marletta, who opine that the closer/arresting mechanism on the weather door failed and was misadjusted in such a manner that it permitted the door to slam shut with excessive speed and force, which departed from accepted safety practice and was a substantial favor in causing Plaintiff's injuries (*id*. ¶ 49). Plaintiff asserts that the City has not met its burden on summary judgment because it did not submit any evidence regarding any particularized or specific inspection procedure that was utilized on the doors prior to Plaintiff's injury (*id*. ¶ 41), and that the City failed in its duty as a common carrier to keep the transportation vehicle safe and maintain a safe means of ingress and egress for passengers (*id*. ¶¶ 41, 45). Plaintiff also contends that the Ferry's public guidance cautioning passengers that the weather-deck doors are "heavy," "difficult to open and close in wind and headway," and that they "can really hurt your fingers" demonstrates that Defendants had notice of an unsafe condition (*id*. ¶ 55). Finally, Plaintiff argues that the motion should be denied because these contentions raise triable issues of fact that must be resolved at trial (*id*. ¶ 32).

On reply, the City argues that the post-accident practice of tying back the doors does not establish prior notice of any alleged defect and constitutes, at most, a subsequent remedial measure (NYSCEF Doc No. 39, reply affirmation ¶ 8). The City further asserts that the Ferry's public guidance regarding the doors merely provides safety information to passengers concerning the inherent characteristics of heavy ferry doors, and does not constitute an admission of a defective condition or establish that the City had notice of any alleged defect. Additionally, the City contends that Plaintiff's reliance on Maritime Safety Requirements and the International Safety

Management Code fails to demonstrate that Defendants had actual or constructive notice of the alleged condition (*id*. ¶ 10).

DISCUSSION

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 Court 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]). 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]). Upon proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "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's Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). "The question of whether a defendant owes a legally recognized duty of care to a plaintiff is the threshold question in any negligence action" (*On v BKO Exp. LLC*, 148 AD3d 50, 53 [1st Dept 2017]). "In the absence of a duty, as a matter of law, there can be no liability" (*Pasternack*, 27 NY3d at 825).

Municipalities have a continuing duty to maintain public premises in a reasonably safe condition (*Harris v East Hills*, 41 NY2d 446, 448 [1977]). However, "no liability attaches unless there is actual or constructive notice of the defective condition" (*id*. at 449), or the municipality caused or created the defective or dangerous condition (*Lewis v Metro. Transp. Auth.*, 99 AD2d 246, 249 [1st Dept 1984], *affd* 64 NY2d 670 [1984] ["The same principle, requiring a showing of actual or constructive notice to establish plaintiff's prima facie case, has been imposed in personal injury actions against a municipality or a lessor, requiring either proof that defendant created the condition or had a sufficient opportunity, within the exercise of reasonable care, to remedy the situation"]).[1]

The City moves for summary judgment on the grounds that Defendants did not have actual or constructive notice of the alleged condition (NYSCEF Doc No. 17, Circharo affirmation in support ¶ 17). A defendant moving for summary judgment dismissal on the basis of actual notice

[1] To the extent that Plaintiff asserts the court should apply the duty of care owed by a common carrier, the notice provisions are the same as stated here (*see Harrison v New York City Transit Auth.*, 113 AD3d 472, 473 [1st Dept 2014] ["Thus, except where the defendant created the condition, a plaintiff must prove actual or constructive notice of the dangerous or defective condition and that the (common carrier) defendant had a sufficient opportunity, within the exercise of reasonable care, to remedy the situation after receiving such notice"]).

should proffer "specific evidence showing the absence of complaints or other accidents at the site" (*Henriquez v Appula Mgmt. Corp.*, 234 AD3d 592, 593 [1st Dept 2025]). The City's submissions on this motion are sufficient to establish the absence of actual notice of a defective condition with respect to the subject door prior to Plaintiff's alleged injury; however, a material question of fact remains as to whether the City had constructive notice of the allegedly defective condition.

"Constructive notice will generally be found where the defect is visible and apparent, and has been in that condition so long that the city or the contractor is presumed to have seen it, or to have been negligent in failing to see it" (*Lewis v Metro*, 99 AD2d at 249). A party who moves for summary judgment must "submit specific evidence as to when the area was last inspected or cleaned" to satisfy its *prima facie* burden on the motion (*Henriquez v Appula Mgmt. Corp.*, 234 AD3d 592, 593 [1st Dept 2025]; *Simpson v City of New York*, 126 AD3d 640, 640-641 [1st Dept 2015] ["defendants failed to demonstrate that they lacked actual or constructive notice of the alleged condition, because they failed to proffer an affidavit or testimony based on personal knowledge as to when their employees last inspected the sidewalk before the accident"]; *Spector v Cushman & Wakefield, Inc.*, 87 AD3d 422, 423 [1st Dept 2011] ["Citibank has failed to meet its burden with respect to actual or constructive notice of the ice because it proffered no affidavit or testimony based on personal knowledge as to when its employees last inspected the sidewalk or the sidewalk's condition before the accident"]).

The testimonial evidence submitted by the City is insufficient to satisfy its burden on the motion to demonstrate that Defendants lacked constructive notice of the allegedly defective condition. Although the City's witness testified that the Marchi was subject to Coast Guard inspections four times per year, he did not describe the scope of those inspections or indicate whether they included any specific inspection of the doors at issue (NYSCEF Doc No. 26, transcript at 38). When asked how frequently the weather-deck doors are inspected for safety, the witness responded that one would "have to check with the Safety Department" (NYSCEF Doc No. 26, transcript at 37–38).

The witness further testified that the ferries are subject to annual external audits; however, when asked whether the auditors inspect the entire vessel, he stated that the auditors "will monitor . . . watch us . . . check our books . . . stuff like that" (*id*. at 39). This testimony is insufficient to establish when the subject doors were last inspected. Moreover, the record contains no other evidence providing this information (NYSCEF Doc Nos. 16–28). Accordingly, the City has failed to meet its burden on the motion.

The City's reply argument that "the burden rests with Plaintiff to establish that a defective condition was visible and apparent and existed for a sufficient length of time prior to the accident to permit its discovery and remediation" is also unpersuasive. Plaintiff did not move for summary judgment, therefore the burden of demonstrating that the condition is not defective rests with the City. Both parties submitted evidence that wind conditions were not high on the day of the incident. Plaintiff, however, attests that the door "slammed shut quickly" on her hand "with extreme force," causing a fracture to her wrist (NYSCEF Doc No. 36, Gordon affirmation ¶¶ 2–3). She further testified at her deposition that she was transported by ambulance to a hospital immediately after disembarking from the ferry, where she underwent an X-ray and was advised that she had sustained a fracture (NYSCEF Doc No. 25, transcript at 33–34).

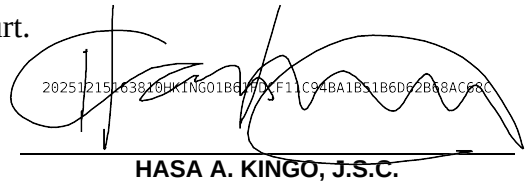
Regardless of whether the court considers the expert affidavit proffered by Plaintiff, her testimony raises a material question of fact that cannot be resolved on summary judgment by the City's self-serving evidence that a post-accident inspection found the doors to be in good working order. Accordingly, the motion is denied.

Accordingly, it is hereby

ORDERED that the motion for summary judgment is denied; and it is further

ORDERED that the parties are directed to appear for a settlement conference on December 16, 2025 at 10:00 a.m. at 80 Centre Street, Room 103, New York, New York.

This constitutes the decision and order of the court.



12/15/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
		GRANTED	[X] **DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**