SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR **PART** 34M
Justice

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EDWARD VLADICH,

Plaintiff,

- v -

SCHWAB HOUSE GARAGE CORP., KEITH SEIDEBERG, ELLEN WALD, ELEVEN RIVERSIDE DRIVE CORP.,

Defendant.

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INDEX NO. 153040/2022

MOTION DATE 06/13/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for JUDGMENT - SUMMARY.

In April 2022, plaintiff Edward Vladich commenced this personal injury action against various defendants, including, for purposes of this motion, Eleven Riverside Drive Corp. (hereinafter, "defendant"). Plaintiff alleges that defendants either created or had notice of a dangerous sidewalk condition that caused him to slip and fall on May 11, 2021.[1]

In this motion sequence (001), defendant moves for summary judgment pursuant to CPLR §3212 to dismiss plaintiff's complaint. Defendant argues that surveillance footage indisputable demonstrates that, contrary to plaintiff's testimony, his injuries were proximately caused solely by his own conduct—namely, that he tripped over his own bag while walking adjacent to its building—and not by any dangerous or defective condition on the premises. Plaintiff opposes the motion in its entirety. He asserts that defendant may be held liable because that same video establishes that defendants were washing the sidewalk immediately before plaintiff's fall and, thus, created the dangerous wet condition of the sidewalk. In his view there are, at the very least, issues of fact as to whether defendant created or had notice of the condition of the sidewalk. For the following reasons, defendant is entitled to summary judgment.

BACKGROUND

On May 11, 2021, plaintiff slipped and fell when walking adjacent to defendant's property located at 11 Riverside Drive New York, New York (hereinafter, "the building") while on his was to work. (*See* NYSCEF doc. no. 44 at 38-40, plaintiff dep. transcript.) Plaintiff attributed his injury to an excessive amount of water used by defendant to wash their sidewalk.

[1] Prior to this motion, defendant Schwab House Garage Corp. dissolved and did not appear following after filing of Plaintiff's summons and complaint. Plaintiff has not sought a default judgment against it. Plaintiff claims against defendant's Kieth Seideberg and Ellen Wald were discontinued per the parties' stipulation of discontinuance. (*See* NYSCEF doc. no. 26, stipulation of discontinuance.)

(*Id.* at 41, 52-53.) Plaintiff claims that he suffered significant, permanent, and progressive injury to various parts of his body that has interfered with his quality of life. (*Id.* at 161-162, 167-182.)

In support of its motion, defendant attaches a surveillance video of the accident in question, taken from the building's security camera. In this video, plaintiff is wearing a black jacket, black pants, and grey sneakers with white soles and holding a tote bag in his left hand. As he approaches the subject sidewalk area, defendant's porter, Jose Henriquez, is hosing down the area. Immediately before the fall, Henriquez is seen turning away from plaintiff, with his back now facing plaintiff. As plaintiff continues along the sidewalk, he walks directly next to a tree well guard. As he passes it, the video shows plaintiff's tote bag hitting the tree well guard and then striking plaintiff's left leg, which, in turn, causes his left leg to knock into the back of his right leg. From the video, plaintiff's left foot can clearly be seen striking his right heel, immediately after which he falls. (NYSCEF doc. no. 46, accident videos.)

George H. Pfreundschuh, a licensed professional engineer, submitted an affidavit in further support of defendant's motion. Therein, he opined that the accident in question was neither caused by improper maintenance of the sidewalk nor the manner in which defendant's facility manager was washing the sidewalk but rather by plaintiff's own failure to exercise reasonable care for his personal safety. His opinion was based on his visit to the building on May 13, 2024, where he found the sidewalk "provided amble slip resistance when wet, as objectively determined from my slip resistance measurement, " as well the surveillance video footage produced by defendant. (NYSCEF doc. no. 48, Pfreundschuh aff.) As described above, he observed that the plaintiff's body movement as he fell was consistent with him tripping caused by the tote bag hitting the tree guard rather than slipping on the sidewalk from excessive water or an improper slip resistance. (NYSCEF doc. no. 48 at ¶8, Pfreundschuh Affirmation.).

DISCUSSION

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact. (*Zuckerman v City of N. Y.*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923 [1986].) If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so. (*Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 988 [2014]; *Vega v Reslani Construction Corp.*, 18 NY3d 499, 503 [2012].)

Here, in attaching the surveillance footage, defendant has undoubtedly met its prima facie burden in showing that plaintiff's injuries were not caused by a defective condition on the sidewalk but rather his own actions. (*See Batista v. Metropolitan Transportation Authority*, 210 AD3d 487 [1st Dept 2022] [granting summary judgment where video conclusively refuted the plaintiff's theory of liability and established that he, rather than the defendant, was negligent]; *Turso-Drasche v. Banana Republic*, LLC, 172 AD3d 485, 486 [1st Dept 2019] [granting summary judgment where video of accident demonstrated that the defendants did not breach a duty of care]; *Cordova v 653 Eleventh Ave. LLC*, 190 AD3d 637 [1st Dept 2021] [the defendant properly granted summary judgment where video evidence refuted the plaintiff's testimony to

the contrary].) Since there is no dispute as to the authenticity of the surveillance video, the Court finds that defendant has demonstrated that the condition of the sidewalk, regardless of whether it was excessively wet or had an "improper slip resistance," was not a proximate cause of his injuries. [2]

Furthermore, plaintiff's opposition fails to establish that triable issues of fact remain. In his view, the video footage shows that Henriquez created the dangerous condition—the rapidly moving water—in the few seconds prior to his injury. (NYSCEF doc. no. 51 at ¶26, plaintiff aff. in opp.) Thus, in testifying that he "encountered a wet sidewalk," that he was "trying to circumvent" the porter who had not stopped hosing the sidewalk, and that his "slip fall, trip fall" was caused by the excessive amount of water on the pavement, plaintiff maintains that he has sufficiently identified the cause of his injury without speculation. (*Id.* at ¶¶30-31.) Yet this argument does not address the fact that the video evidence directly refutes the contention that excess water may have contributed to causing his injuries since plaintiff's tote bag can clearly be seen to strike the tree well guard and then his left foot.[3] Further, contrary to plaintiff's contention, the video provides no support whatsoever that a jury could find that "plaintiff's left leg only moved and stepped on his right foot because his left foot slipped on the stream of water being sprayed." (*Id.* at ¶ 39.) Again, his left foot is not seen to slip at all. Further, inasmuch as plaintiff suggests that a jury could find he slipped on excess water, as defendant points out, during his deposition, he did not testify to experiencing his left foot slipping and explicitly stated that his two feet did not come into contact with each other prior to falling. [4] (NYSCEF doc. no. 41 at 182-184.) In sum, plaintiff has not demonstrated that issues of fact remain that would warrant a trial.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant Eleven Riverside Drive Corp.'s motion for summary judgment pursuant to CPLR 3212 is granted and the complaint is dismissed; and it is further

ORDERED that counsel for defendant shall serve a copy of this order, along with notice of entry, on all parties within twenty (20) days.

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[2] Defendant argues that, regardless of whether an exterior surface is wet from rain or other natural event or through human action like using a hose to clean its surface, the mere fact that a sidewalk is wet is not actionable as a matter of law. (*See Boch v Loumarita Realty Corp.*, 118 AD3d 540, 541 [1st Dept 2014].) Because the Court grants summary judgment on other grounds, it need not decide this issue. However, it notes that at least one Justice of this Court disagrees. (*See Zapata v Ortega*, 2022 NY Misc. LEXIS 11206 at *14 [Sup. Ct. NY County 2022]). Moreover, *Ceron v Yeshiva Univ.*, decided one year later, does not appear to endorse defendant's view that "a wet outdoor walking surface alone is not actionable." (126 AD3d 630, 631 [1st Dept 2015] ["Mere wetness on a walking surface *due to rain* does not constitute a dangerous condition"].) On the other hand, plaintiff has not cited, nor is the Court aware of, through its own research, caselaw concluding that washing the sidewalk, as required by NYC Administrative Code §23-332, could create a dangerous condition.

[3] The video does not show Henriquez to be "pointing a hose in the direction of plaintiff's feet" as plaintiff contends.

[4] Plaintiff initially alleged that he tripped on an uneven sidewalk and produced photographs showing a purported structural defect. Yet photos were taken of an area approximately 50 feet from where he actually fell. (*See* NYSCEF doc. no. 41 at ¶7, plaintiff's first bill of particulars.) A review of the bill of particulars reveals that nowhere is "excessive water" mention; the only mention of an alleged defect is in "failing to maintain an exterior sidewalk with an uneven walking surface." (*Id.*)

This constitutes the Decision and Order of the Court.

11/19/2025
DATE

DAKOTA D. RAMSEUR J.S.C.

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