

Sottile v City of New York

2025 NY Slip Op 34899(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 161425/2018

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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PHILIP SOTTILE,

Plaintiff,

- v -

THE CITY OF NEW YORK, JUDLAU CONTRACTING, INC., EMPIRE CITY SUBWAY COMPANY (LIMITED), CONSOLIDATED EDISON COMPANY OF NEW YORK,

Defendant.

-----X

THE CITY OF NEW YORK

Plaintiff,

-against-

GATEWAY INDUSTRIES, INC.

Defendant.

-----X

INDEX NO. 161425/2018
MOTION DATE 06/27/2025
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

Third-Party
Index No. 595520/2023

The following e-filed documents, listed by NYSCEF document number (Motion 006) 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270

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

Upon the foregoing documents, and after a final submission date of October 23, 2025, Defendant/Third-Party Plaintiff the City of New York's ("Defendant") motion for summary judgment dismissing Plaintiff Philip Sottile's ("Plaintiff") Complaint is denied.

On October 22, 2017, Plaintiff was walking near 235 Delancey Street South, New York, New York (the "Premises"), when he fell over three to four pieces of rebar protruding two and a half to three feet from a chain link fence surrounding the Premises (NYSCEF Doc. 227 at 15; 17).

Plaintiff testified there was a pallet of rebar inside the fence, along with other construction equipment and material (NYSCEF Doc. 228 at 53-54).

The Premises is owned by New York City and was used as a staging ground for a construction project known as the Houston Street Project (the “Project”) (NYSCEF Doc. 321 at 22-23). New York City leased the Premises to its contractor, Third-Party Defendant Gateway Industries Inc. (“Gateway”) (NYSCEF Doc. 232 at 33). According to Gateway’s witness, Nick Palmadesso, the Premises was a “24-hour operation” and Gateway was responsible for supplying and storing rebar at the Premises (NYSCEF Doc. 232 at 40, 53). In the months leading up to Plaintiff’s accident, Gateway received over 25 tons of rebar at the Premises (NYSCEF Doc. 232 at 76). Daily reports indicate Gateway performed work involving rebar the day before Plaintiff’s accident (NYSCEF Doc. 262 at p. 69).

New York City was also present at the Premises in connection with the Project, including designated office space for the New York City Department of Transportation’s project manager and quality assurance engineer (NYSCEF Doc. 232 at 38-39). Mr. Palmadesso testified New York City inspectors walked through the Premises every day, and if they saw anything out of place, they would warn Gateway (NYSCEF Doc. 232 at 47). Mr. Palmadesso admitted rebar protruding from a chain link fence could constitute a tripping hazard (NYSCEF Doc. 232 at 58).

According to Beatriz Duran, a project manager with New York City Department of Transportation, New York City contracted non-party Hardesty and Hanover (“Hardesty”) to serve as the resident engineer at the Project and to supervise the contractor (NYSCEF Doc. 231 at 28). She admitted she visited the Premises once a week, and her colleague Patrick Nestore visited the Premises daily (NYSCEF Doc. 231 at 35). She also testified if she observed rebar protruding from the fence, she would instruct Gateway to fix the rebar because it could constitute a tripping hazard

(NYSCEF Doc. 231 at 43-44). Ms. Duran could not testify as to the last time the perimeter of the Premises was inspected for tripping hazards prior to Plaintiff's fall (NYSCEF Doc. 231 at 51).

New York City now moves for summary judgment dismissing Plaintiff's Complaint and Plaintiff opposes. Viewing the facts in the light most favorable to the non-movant, New York City failed to meet its *prima facie* burden. New York City must do more than point to gaps in Plaintiff's evidence (*see, e.g. Maria v Concourse Estate, LLC*, 200 AD3d 578 [1st Dept 2021] citing *Vargas v Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018]). New York City must establish affirmatively that shortly prior to Plaintiff's accident, the Premises had been inspected and there was no rebar protruding onto the sidewalk (*see, e.g. O'Halloran v City of New York*, 78 AD3d 536, 537 [1st Dept 2010] [failure to establish affirmatively that defendant did not cause or contribute to accident warranted denial of summary judgment]). The failure to provide specific testimony or documentary evidence regarding the last time the Premises were inspected is insufficient for New York City to meet its *prima facie* burden (*Henriquez v Appula Mgt. Corp.*, 234 AD3d 592, 593 [1st Dept 2025]). This is especially the case where, as here, New York City's employees frequented the Premises.

Testimony confirming New York City could order dangerous conditions to be remedied and withhold payment to its contractors if necessary creates an issue of fact as to whether New York City may be held vicariously liable for the negligent acts of its contractors. A jury could find that New York City exercised the requisite level of control over its contractors to be held vicariously liable and/or that New York City was negligent in supervising its contractors (*Saini v Tonju Associates*, 299 AD2d 244, 245 [1st Dept 2002]). Because New York City, as a landowner, had a non-delegable duty to maintain the sidewalk pursuant to NYC Admin. Code § 7-210(b), it may be vicariously liable for the acts of its contractor that created a dangerous condition on the

sidewalk (see *Pesante v Vertical Industrial Development Corp.*, 29 NY3d 983, 983-84 [2017]; *Tobola v 123 Washington, LLC*, 195 AD3d 456, 457 [1st Dept 2021]).

New York City’s argument that NYC Admin. Code § 7-210(b) does not apply is unavailing. NYC Admin. Code § 7-210(b) imposes liability on landowners who negligently fail to remove “material” from the sidewalk. According to Plaintiff’s undisputed testimony, the rebar was slightly above the sidewalk which obstructed the sidewalk and caused him to trip. Thus a jury could reasonably find that the rebar was material that New York City or its contractors should have removed from the sidewalk. Because the Court finds there are triable issues of fact as to whether NYC Admin. Code § 7-210(b) was violated, it need not reach whether it may be held liable under a “special use” theory. Finally, New York City’s argument that Plaintiff failed to show compliance with NYC Admin. Code § 7-201(c)(2) was improperly raised for the first time on reply and thus cannot be considered by the Court (*Simon v FrancInvest, S.A.*, 192 AD3d 565, 569 [1st Dept 2021]; *Alrobaia ex rel. Severs v Park Lane Mosholu Corp.*, 74 AD3d 403, 404 [1st Dept 2010]).

Accordingly, it is hereby,

ORDERED that New York City’s motion for summary judgment is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this

Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

12/19/2025
DATE

Mary V Rosado JAC
HON. MARY V. ROSADO, 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"/>	GRANTED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE