

Harford v National Grid USA

2025 NY Slip Op 35055(U)

December 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 517078/2021

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 22nd day of December 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

GILLIAN E. HARFORD,

Plaintiff(s),

-against-

NATIONAL GRID USA, NATIONAL GRID USA SERVICE COMPANY, INC., NATIONAL GRID CORPORATE SERVICES LLC, THE BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID NY, NETWORK INFRASTRUCTURE, INC., THE HALLEN CONSTRUCTION CO., INC. and NEW YORK PAVING, INC.,

Defendant(s).

DECISION & ORDER

Index No.: 517078/2021

Return Date: 09/11/2025

Motion Seq.: 002

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers Numbered**

Notice of Motion and Supporting Documents	58-66
Affirmation in Opposition and Supporting Documents	68-69
Reply Affirmation and Supporting Documents	69

Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for personal injuries sustained by plaintiff when she fell on a wooden wedge that was placed under a steel plate in the roadway by defendants NATIONAL GRID USA, NATIONAL GRID USA SERVICE COMPANY, INC., NATIONAL GRID CORPORATE SERVICES LLC, THE BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID NY (“National Grid”).

Plaintiff has now moved this Court for an order per CPLR § 3212 for summary judgment on the issue of liability in that National Grid created a hazardous and dangerous condition on the roadway. In opposition, defendant argues that in addition to the metal plate, there were

cones/barricades, that plaintiff admittedly observed before her accident. Plaintiff testified that she also observed tar around the plates holding the wedge in place.

Defendant's witness testified that at the location of plaintiff's accident, National Grid was relocating the gas main in preparation of work by the Metropolitan Transportation Authority ("MTA"). The MTA was installing pillars for the nearby elevated train. This 50-foot-long excavation work took place over approximately three days. National Grid then placed metal plates over the open excavation with Colpatch (blacktop/asphalt) around the edges of the plate. Additionally, metal spikes were inserted through the end of the plates to hold them in place when vehicles would pass over the plates. If the plates could not lay flat on the roadway, wooden wedges were placed underneath them to prevent bouncing and shifting. Asphalt was then applied over the wedges to create a ramp to prevent tripping. The wedge can break down due to traffic traveling over the wedge and plate. The metal spikes may also become loose causing the plate to shift.

Although a jury determines whether and to what extent a particular duty was breached, it is for the court first to determine whether any duty exists, taking into consideration the reasonable expectations of the parties and society generally. The scope of any such duty of care varies with the foreseeability of the possible harm. (*Cupo v Karfunkel*, 1 AD3d 48, 51 [2d Dept 2003] [*internal quotations omitted*]). To defeat summary judgment, defendant has a two-prong burden *i.e.*, that the defective condition was (1) open and obvious and (2) not inherently dangerous as a matter of law (*Gallardo v Gilbert*, 153 AD3d 791, 792 [2d Dept 2017]). Therefore, "[p]roof that a dangerous condition is open and obvious does not preclude a finding of liability" (*see Russo v Home Goods, Inc.*, 119 AD3d 924, 925 [2d Dept 2014]), because "[t]he determination of whether an asserted hazard is open and obvious cannot be divorced from the

surrounding circumstances, and whether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case (*Russo v Home Goods, Inc.*, 119 AD3d 925-926). This duty to keep the roadway in a reasonably safe condition for those who use it is separate from the duty to warn (*see DiVietro v Gould Palisades Corp.*, 4 AD3d 324, 325 [2d Dept 2004]). Therefore, while the fact that an open and obvious condition relieves a defendant of the duty to warn, it does not relieve them of the burden to demonstrate that they “exercised reasonable care under the circumstances to remedy the condition” to avoid the risk of injury (*Id.*).

The motion is denied. Plaintiff admittedly observed the cones/barricades and the wooden wedge. Therefore, National Grid met its burden that it satisfied its duty to warn the public of the plates on the roadway. (*Gallardo v Gilbert*, 153 AD3d 792). However, the questions of whether defendant (1) negligently tarred the wooden wedge and (2) had notice that the plates allegedly shifted or lifted or that the tar was negligently placed on the plates must be resolved by a jury (*Cupo v Karfunkel*, 1 AD3d 51). Plaintiff did not establish as a matter of law that National Grid breached its duty to repair the plates within a reasonable time after receiving actual notice or having constructive notice of this alleged defective condition in the roadway for a sufficient length of time to have an opportunity to discover and remedy it (*see Torre v Aspen Knolls Estates Home Owners Assn., Inc.*, 150 AD3d 789 [2d Dept 2017]).

The Court has considered the parties’ remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order per CPLR § 3212 granting summary judgment on the issue of liability is denied.

This constitutes the decision and order of the Court.

ENTER:



For Clerks use only:

MG _____

MD _____

Motion seq. # _____

Hon. Anne J. Swern, J.S.C.

Dated: 12/22/2025