

Tavarez v Poe Affiliates L.P.

2025 NY Slip Op 35119(U)

July 28, 2025

Supreme Court, Bronx County

Docket Number: Index No. 24185/2020E

Judge: Mary Ann Brigantti

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This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 25

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EDIBURGA TAVAREZ

Index No. 24185/2020E

Plaintiff,

Hon. MARY ANN BRIGANTTI,
Justice of the Supreme Court

- against -

POE AFFILIATES LP, et al.,

Defendants.

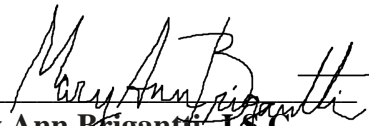
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The following papers numbered 70 to 96, 102, 103 and 105 were read on this motion (**Seq. No. 4**) for **SUMMARY JUDGMENT** noticed on **May 16, 2025** and duly submitted as **Nos.** on the Motion Calendar of **May 16, 2025**.

	<u>NYSCEF Doc. No.</u>
Notice of Motion – Exhibits, Memorandum and Affidavits Annexed	70-87, 103
Opposition – Exhibit. Memorandum and Affidavits Annexed	89-93, 105
Reply– Memorandum and Affidavits Annexed	94-95

This motion is decided in accordance with the accompanying memorandum decision.

Dated: July 28, 2025

Hon. 
Mary Ann Brigantti, J.S.C.

- X
- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 - FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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EDIBURGA TAVAREZ,

DECISION and ORDER
Index No. 24185/2020E

Plaintiff,

- against -

POE AFFILIATES L.P., 1560 GC LLC., AND
S&J CONTRUCTION SERVICES NY LLC.,

Defendants.

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HON. MARY ANN BRIGANTTI,

Upon the foregoing papers, the Defendant 1560 GC LLC (“1560 GC”) moves for an order granting summary judgment dismissing the Complaint as against it. Ediburga Tavarez (“Plaintiff”) opposes the motion.

BACKGROUND

A. Procedural Background

The instant action began with Plaintiff filing her Summons and Complaint on May 25, 2020, against sole defendant Poe Affiliates L.P. (“Poe”) (NYSCEF Doc. No. 1). The action was consolidated with a separate action in Bronx County under Index No. 8166515/2021E (the “Separate Action”), effectively adding 1560 GC and S&J Construction Services NY LLC (“S&J”) as defendants. By stipulation the action was discontinued as against Poe on December 2, 2024 (NYSCEF Doc. No. 99).

Plaintiff, through her complaint as filed against 1560 GC and S&J (“Remaining Defendants”) in the Separate Action (NSYCEF Doc. No. 75 [“Complaint”]), alleges that Remaining Defendants are liable for damages she sustained after falling on a sidewalk under their control on or about the premises at 1560 Grand Concourse, Bronx, New York, 10457 (the “Premises”) on January 8, 2020 (*see, e.g.*, Complaint). Specifically, Plaintiff alleges that she fell on the sidewalk adjacent to the Premises due to a dangerous condition which Remaining Defendants had the responsibility to ameliorate (*id.*).

1560 GC filed its answer to the Complaint in the Separate Action, dated May 12, 2022 (NYSCEF Doc. No. 74 [“Answer”]). 1560 GC, through its Answer, asserted a lack of knowledge

sufficient to form a belief as to, or otherwise denied, the material allegations of the Complaint, and made certain cross-claims against S&J (*see, e.g.*, Answer). S&J has not filed an answer nor otherwise appeared in this action.

B. 1560 GC's Motion for Summary Judgment

1560 GC filed the instant motion on June 20, 2024 for an order granting it summary judgment and dismissing all claims and cross-claims against it, and for any other such further and different relief this Court deems proper. 1560 GC argues: (1) that no dangerous, defective or actionable condition existed; and (2) if the alleged defect existed, it was *de minimis* in nature, without any notice imputed onto 1560 GC, and thus nonactionable. Plaintiff filed her opposition to the motion on August 29, 2024. Plaintiff argues that the motion ought not to be granted given the early stage of discovery in the present case, and asserts 1560 GC's failure to demonstrate it was not the proximate cause of her injuries precludes the sought after relief. In reply, 1560 GC argues that it has met its prima facie burden and Plaintiff has failed to proffer any evidence in opposition sufficient to defeat the motion.

LEGAL STANDARD

The Court's function on a motion for summary judgment is issue finding rather than issue determination (*Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). It is well settled that the movant on a summary judgment motion "must 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] [citations omitted]; *see also Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1978]). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (*see CPLR 3212*). The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party (*Jacobsen v. New York City Health & Hosps. Corp.*, 22 NY3d 824 [2014]; *see also Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). A moving defendant does not meet his or her burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case—the defendant must affirmatively demonstrate the merit of his or her defense (*see Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 462 [1st Dept 2016]). A movant's

failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *Medina v Fischer Mills Condo Assn.*, 181 AD3d 448, 449 [1st Dept 2020]). Once a movant meets its burden, 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 (*Vega v Restani Constr. Corp.*, 18 NY3d at 503, *quoting Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even ‘arguable’” (*De Paris v Women’s Natl. Republican Club, Inc.*, 148 AD3d 401, 403-404 [1st Dept 2017], *quoting Gibson v. American Exp. Isbrandtsen Lines, Inc.*, 125 AD2d 65, 74 [1st Dept 1987]; *see Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr.*, 161 AD2d 480, 480 [1st Dept 1990]). In other words, “[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992]).

DISCUSSION

“Whether a dangerous or defective condition exists on the property of another so as to create liability “‘depends on the peculiar facts and circumstances of each case’ and is generally a question of fact for the jury”” (*Trincere v. County of Suffolk*, 90 NY2d 976, 977 [1997] [citations omitted]). 1560 GC “as the party seeking dismissal of the complaint on the basis that the alleged defect is trivial, ‘must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses’” (*Weatherspoon v. Mazal Ubracha 101 LLC*, 239 AD3d 531, 531 [1st Dept 2025], *quoting Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 79 [2015]). “While it is true that ‘there is no “minimal dimension test” or per se rule that a defect must be of a certain minimum height of depth in order to be actionable’ . . . , producing measurements of the defect together with evidence of the surrounding circumstances is required for a prima facie showing that the defect was trivial as a matter of law” (*Weatherspoon*, 239 AD3d at 531, *quoting Trincere*, 90 NY2d at 977). Summary judgment should not “be granted in a case in which the dimensions of the alleged defect are unknown and the photographs and descriptions inconclusive” (*Hutchinson*, 26 NY3d at 84). 1560 GC’s only proffered evidence, aside from the photographs, as to the nature of the subject defect is an

affidavit from its employee, Angie Rodriguez, wherein she states she “cannot discern any height differential” (NYSCEF Doc. No. 86 at para. 10). Here, Defendant “has not provided the actual measurements of the defect here, and thus, making every favorable inference in favor of the nonmovant plaintiff, has failed to establish its prima facie entitlement to summary judgment” (*Weatherspoon*, 239 AD3d at 531; *see also Trinidad v. Catsimatidis*, 190 AD3d 444, 445 [1st Dept 2021] [“Although defendant relies on photographs to prove his defense that the defect is trivial, summary judgment should not be granted where, as here, ‘the dimensions of the alleged defect are unknown and the photographs and descriptions inconclusive’”]).

Alternatively, 1560 GC argues that there is no evidence that it had any notice, actual or constructive, of the condition nor is there any evidence that 1560 GC created said condition. While Angie Rodriguez avers that she was unaware of any complaints made regarding the subject condition, “[1560 GC] did not satisfy its burden of establishing lack of constructive notice as a matter of law since it failed to submit an affidavit, deposition testimony or other competent evidence from [an] employee establishing that any employees regularly inspected the sidewalk” (*Massey v. Newburgh W. Realty, Inc.*, 84 AD3d 564, 567 [1st Dept 2011]; *see also Trinidad*, 190 AD3d at 444 [1st Dept 2021] [“Although defendant established that he lacked actual notice of any hazardous condition on the property and that there had been no complaints or violations involving the alleged defective sidewalk before plaintiff’s accident . . . triable issues exist as to whether defendant had constructive notice”]).

As 1560 GC has failed to make the requisite prima facie showing on a motion for summary judgment, this Court need not address Plaintiff’s opposition (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

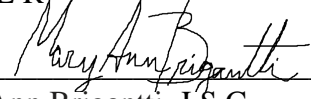
Accordingly, it is hereby

ORDERED that 1560 GC LLC’s motion for summary judgment pursuant to CPLR 3212 is denied.

This constitutes the Decision and Order of this Court.

Dated: July 28, 2025

ENTER



Mary Ann Brigantti, J.S.C