Urquiza v Trilivas
2025 NY Slip Op 35294(U)
August 18, 2025
Supreme Court, Queens County
Docket Number: Index No. 705403/2020
Judge: Chereé A. Buggs
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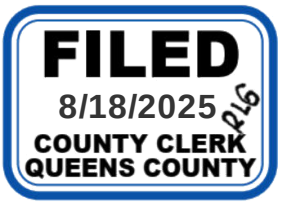
Amended Short Form Order



NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS** IAS PART 30
Justice

----------X Index No.:705403/2020

MARIA URQUIZA,

Motion Date: 5/19/25

Motion Cal. No.: **37, 38 39** and **40**

Plaintiff,

-against- Motion Seq. No.: **8, 9, 10** and **11**

Yiannoula Trilivas, Ioannis Trilivas, and Michael T. Trilivas of Queens, NY as Trustees of the TRILIVAS IRREVOCABLE TRUST created under Agreement dated December 21, 2012, made by Theodoros Trilivas, and PETAR RADOVIC, SNEZANA RADOVIC, SLOBODAN RADOVIC,and SLOBODANKA RADOVIC, RIDGEWOOD THAI, INC., and TUNG TONG INC. d/b/a TASTY THAI,

Defendants. **AMENDED**
----------X **DECISION/ORDER**

PETER RADOVIC, SNEZANA RADOVIC, SLOBODAN RADOVIC and SLOBODANKA RADOVIC,

Third-Party Plaintiff,

-against-

THE CITY OF NEW YORK

Third-Party Defendants.

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This Amended Decision/Order corrects the motion sequence numbers cited in the decretal paragraphs of the original Decision/Order dated July 30, 2025, which stated that motion sequence numbers 9 and 11 were granted and motion sequence numbers 8 and 10 were denied. The Amended Decision/Order is corrected to order that motion sequence numbers ***8 and 11*** are **granted**, and sequence numbers ***9 and 10*** are **denied**.

The following e-file papers numbered EF 174-187, 24, 231, 238-239 and 253 submitted and considered on this **motion sequence # 8** by defendants, Yiannoula Trilivas, Ioannis Trilivas, and Michael T. Trilivas of Queens, NY, as Trustees of the TRILIVAS IRREVOCABLE TRUST created under Agreement dated December 12, 2012, made by Theodore Trilivas (collectively referred to as "Trilivas Defendants") for an Order pursuant to CPLR §3212 granting summary judgment and dismissing all claims and cross-claims as against Trilivas Defendants; and the efile papers numbered EF 138-144, 149, 152-158, 162-164 and 169-172 submitted and considered on this **motion sequence #9** by the Plaintiff seeking an order pursuant to CPLR § 3212 granting plaintiff's summary judgment; and the efile papers numbered EF 199-203, 226, 233, 242 and 247-248 submitted and considered on this **motion sequence #10** by PETER RADOVIC, SNEZANA RADOVIC, SLOBODAN RADOVIC and SLOBODANKA RADOVIC (collectively referred to as "Radovic Defendants" seeking an order pursuant to CPLR § 3212 dismissing plaintiff's complaint and any cross-claims and counterclaims as against Radovic Defendants; and the file papers numbered EF 204-223, 227, 234, 241, 244-246 and 249-252 submitted and considered on this **motion sequence #11** by TUNG THONG INC. d/b/a TASTY THAI (hereinafter referred to as "Tung Thong") along with such other and further relief that this Court deems just and proper.

Motion Sequence 8	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	EF 174-187
Affirmation in Opposition-Affidavits-Exhibit.....	EF 238-239
Reply Affirmations…….....	EF 253

Motion Sequence 9	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	EF 188-198
Affirmations in Opposition…….....	EF 240
Affirmation in Opp……...	EF 243
Reply Affirmation…….....	EF 254-255

Motion Sequence 10	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	EF 199-203
Affirmations in Opposition…….....	EF 242
Reply Affirmation- Exhibit…….....	EF 247-248

Motion Sequence 11	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	EF 204-223
Affirmations in Opposition…….....	EF 241
Affirmation in Supp.- Exhibits……..	EF 244-246
Reply Affirmation-Affidavits-Exhibits.....	EF 249-252

Plaintiff commenced this action by filing the Summons and Verified Complaint on or about May 26, 2020 alleging personal injuries. Plaintiff contends on November 9, 2019 at 8:30 PM, she was walking her dog when she was caused to trip and fall on the sidewalk abutting 72-04 and 72-06 Forest Avenue, Queens, NY on a "defective, cracked, irregular, holey, broken, dilapidated" hazard on the sidewalk. At her deposition, Plaintiff identified the portion of the sidewalk that caused her to fall.

Trilivas Defendants owned 72-04 Forest Avenue, Queens, New York at the relevant time. In support of their motion for summary judgment, Trilivas Defendants attached the photograph where Plaintiff identified the hazard that caused her to fall and argue that the photograph indicates that the hazard lies solely within the property line of 72-06 Forest Avenue, Queens NY. In support of this contention, Trilivas Defendants provided the affidavit of land surveyor Frank Ferrantello, who performed an investigation and found that the defect does not fall on or in front of 72-04 Forest Avenue, Queens, NY. Thus, Trilivas Defendants contend that they had no duty to maintain the portion of the sidewalk where Plaintiff fell and did not create or make special use of that portion of the sidewalk. It must also be noted that Trilivas Defendants witness Ioannis Trilivas testified that the sidewalk abutting 72-04 Forest Avenue, Queens, NY was repaired when the premises was purchased in either 2002 or 2003 (*see* NYSCEF Doc. No. 186 pg 16 lines 4-13).

Plaintiff contends that both Trilivas Defendants and Radovic Defendants breached their duty imposed by Administrative Code §§ 7-210 and 19-152, to maintain the sidewalk abutting their contiguous properties in a reasonably safe condition as Plaintiff's accident was caused by a holey defect existing on the property line between adjoining flags. Plaintiff contends the oval shaped holey joint crack was approximately two inches deep and between one and two feet in length and constituted a tripping hazard. Plaintiff argues she had the right to believe that the sidewalk was maintained properly while walking normally and straight ahead (*see Sparks v City of New York,* 31 AD2d 660, 661 [2d Dept 1968]).

In further support of her motion, Plaintiff provided the engineering opinion of Scott Silberman who after reviewing the bill of particulars, photographs of the condition over the years, deposition testimony from Plaintiff and Radovic defendants and performing a site visit opined that based upon his review of google images from 2011 to November 2019, the sidewalk defect existed for years. He further opined that the google images reveal that the sidewalk was repaired prior to the fall, but rather than replacing the entire sidewalk flag the repair involved placing a thin overlay on top of the broken sidewalk flags which ultimately broke away causing the defect to reappear. Silberman further opined that the sidewalk was broken and severely mis-leveled resulting in a vertical grade differential creating a tripping hazard. Silberman also noted that the defect constituted a trap as it was small enough to not

be visually obvious and depending on the time of day, shadows could cast upon the walking surface that further camouflaged the defect. Silberman opined within a reasonable degree of engineering certainty that the alleged defect was a significant contributing factor in this accident. Plaintiff further argues that it is not his responsibility to determine which of the defendants held the responsibility of maintaining that portion of the sidewalk as that responsibility falls upon the defendants (*see Yonsufu Sangaray v West River Associates, LLC,* 26 NY3d 793 [2016]).

In *Sangaray*, plaintiff claimed that he sustained personal injuries due to a trip and fall where his toe came into contact with a raised sidewalk flag (*id* at 795). The expansion joint that plaintiff's toe came into contact with abutted the Mercado defendants property but plaintiff sued Mercado and West River who owned the property next to the Mercado property (*id* at 796). West River moved for summary judgment submitting evidence from a land surveyor that the defective condition located on the expansion joint where plaintiff tripped was solely abutting the Mercado property. Plaintiff opposed arguing that West River allowed their sidewalk to fall into disrepair and cannot demonstrate that it maintained its sidewalk in a reasonably safe condition (*id*). Mercado also opposed submitting an affidavit from their own land surveyor who determined that 6% to 8% of the defect fronted the West River property (*id*). The court held "[t]o be sure, the location of the alleged defect and whether it abuts a particular property is significant concerning that particular property owner's *duty* to maintain the sidewalk in a reasonably safe condition. That does not, however, foreclose the possibility that a neighboring property owner may also be subject to liability for failing to maintain its own abutting sidewalk in a reasonably safe condition where it appears that such failure constituted a proximate cause of the injury sustained. Thus, to the extent that *Montalbano* and other cases interpreting section 7-210 can be interpreted as holding that only the landowner whose property abuts the *defect* upon which the plaintiff trips may be held liable, they should no longer be followed for that premise. Simply put, section 7-210(b), by its plain language, does not restrict a landowner's liability for accidents that occur on its own abutting sidewalk where the landowner's failure to comply with its duty to maintain its sidewalk in a reasonably safe condition constitutes a proximate cause of a plaintiff's injuries" (*id* at 799). The court denied West River's motion for summary judgment (*id*).

As to notice, Plaintiff points to Silberman's findings based upon google images from as early as 2011 that the defect existed for a number of years, which creates the presumption that the Defendants were on constructive notice of its existence. Furthermore, Plaintiff points to Silberman's findings that Radovic Defendants attempted to repair the sidewalk by applying a thin overlay on top of the condition rather than replacing the sidewalk flags which Silberman described as placing a "'band-aid' that eventually and foreseeably broke away" (*see* NYSCEF Doc. No. 197 at pg 13) in support of its contention that Radovic Defendants had actual notice of the defective condition. (*see Lindsay La Fleur v Marc Janowitz et al.,* 228 AD3d 636, 637 [2d Dept 2024]).

In support of their motion, Radovic Defendants argue that the portion of the sidewalk where the Plaintiff fell is a bus stop under the control of third-party defendants the City. In support of this contention Radovic Defendants point to the testimony from director of bus stop management/ witness for the City, Rudy Hernandez who testified that the length of the bus stop beginning at the sign and going north is 51 feet (*see* NYSCEF Doc. No. 248 at pg 16 lines 6-9). However, it should further be

clarified that Hernandez testified that the bus stop is in the street not on the sidewalk (*see* NYSCEF Doc. No. 248 at pg 29 lines 2-10). Notwithstanding, "[t]he City of New York, not the NYCTA, is responsible for the maintenance of bus stops within the City of New York, including the roads, curbs, and sidewalks attendant thereto" (citing *Davila v New York City Tr. Auth. et al.,* 66 AD3d 952, 953 [2d Dept 2009]) Slobodanka Radovic testified that she visited the premises two to three times per year and during her visits she would observe delivery trucks and buses drive on the sidewalk in front of 72-04 and 72-06. In response, Slobodanka testified that she would complain via email to the "Transit Authority" who told her to contact the Department of Transportation. Radovic Defendants confirmed that they repaired the sidewalk abutting 72-06 Forest Avenue in 2017.

In support of its motion, Tung Thong argues it was a tenant of 72-04 Forest Avenue, Queens, NY and had no duty to maintain the sidewalk as the defect was pre-existing and the lease did not require Tung Thong to make repairs to pre-existing conditions. Tung Thong contends that they did not cause or create the condition as the google images dating as far back as 2011 establishes that the condition existed prior to them taking possession of the premises in 2018. Furthermore, Tung Thong argues that Trilivas Defendants are not entitled to indemnification and contribution because the Trilivas Defendants are being sued herein for their own negligence.

LAW AND APPLICATION

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*See Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr*., 64 NY2d 851 [1985].) Summary judgment eliminates cases from the Court's trial calendar which can be properly resolved by the Court as a matter of law (*see Andre v Pomeroy,* 35 NY2d 361 [1974]). As summary judgment is a drastic remedy, it should not be granted where there is doubt about the existence of any issues (*see Sillman v Twentieth Century-Fox Film Corp*., 3 NY2d 395 [1957].)

In this premises liability litigation, for a defendant to be held liable, it must be demonstrated that they owed a duty of care to the Plaintiff (*see Palka v Servicemaster Mgt. Servs. Corp*., 83 NY2d 579, 584 [1994]; *Suero-Sosa v Cardona*, 112 AD3d 706 [2d Dept 2013]). "As a general rule, liability for a dangerous or defective condition on real property must be predicated upon ownership, occupancy, control, or special use of that property." (*See Calabro v Harbour at Blue Point Home Owners Assn., Inc*., 120 AD3d 462 [2d Dept 2014]; *see also Puzhayeva v City of New York,* 151 AD3d 988 [2d Dept 2017]; *Sanchez v 1710 Broadway, Inc*., 79 AD3d 845 [2010]; *Gover v Mastic Beach Prop. Owners Assn.*, 57 AD3d 729 [2 Dept 2008]; *Balsam v Delma Eng'g Corp..,* 139 AD2d 292 [1st Dept 1988]; *Minott v City of New York*, 230 AD2d 791 [2d Dept 1996]). If none of these factors are present, a defendant cannot be held responsible for injuries caused by a dangerous or defective condition on the premises (*Id*.).

"In 2003, the New York City Council enacted section 7–210 of the Administrative Code of the City of New York to shift tort liability for injuries resulting from defective sidewalks from the City to abutting property owners" (*see Id* at 652; citing *Zak v City of New York*, 192 AD3d 734, 735

[2d Dept 2021]). "Administrative Code § 7–210 directs landowners to maintain their abutting sidewalks in a reasonably safe condition" (*see Id* at 652; citing *Brachfield v Sternlicht*, 202 AD3d 742, 743 [2d Dept 2022]). "This liability shifting provision does not, however, apply to 'one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes'" (*see Id* at 652; citing *Zak v City of New York*, 192 AD3d at 735 [2d Dept 2021]). "The purpose of the exception in the Code is to recognize the inappropriateness of exposing small-property owners in residence, who have limited resources, to exclusive liability with respect to sidewalk maintenance and repair" (*see Id* at 652; citing *Zak v City of New York*, 192 AD3d at 735 [2d Dept 2021]).

"To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (*Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837 [1986]). In *Gordon*, the plaintiff claimed to have slipped on wax paper located on a step (*Id*). The plaintiff contended the defendant contracted with a concession stand that used the wax paper to be located on the plaza near to the steps and was therefore liable. (*Id*). The court held there was no evidence on the record to indicate the defendant had actual notice of the paper. (*Id* at 838). According to the court, general awareness that litter or some other dangerous condition may be present was not enough to charge the defendant with constructive notice. (*Id*).

In opposition to the Trilivas Defendants motion, Plaintiff argues that their expert Scott Silberman reviewed the survey prepared by Trilivas Defendants expert Ferrantello and found that the seam of the defective sidewalk flag extends on to 72-04 Forest Avenue and that the vertical grade differential is located on the seam. Furthermore, as the premises is a multi-family dwelling with five apartments and a restaurant on the ground floor it is not subject to the exception set forth in Administrative Code §7-210. Plaintiff also argues that Trilivas Defendants had actual and constructive notice of the defect.

In reply, Trilivas Defendants argue that Silberman failed to provide evidence of how he determined that the defective sidewalk extends on to 72-04 Forest Avenue as he noted in his first affirmation that he did not perform a survey of the area. Trilivas Defendants further argue that the photograph and their experts survey establishes that the defect lies solely on 72-06 Forest Avenue and that the relevant sidewalk flag that abuts 72-04 is a solid piece of sidewalk containing no defects.

According to Ferrantello's survey and photographs, the defective condition existed on 72-06 Forest Avenue. While it is true that ownership is not the only basis for a finding of premises liability there has been no showing that Trilivas Defendants' failure to maintain their sidewalk in a reasonably safe condition was a proximate cause of the Plaintiff's injuries. The Trilivas Defendants alleged that they performed repairs to the sidewalk abutting their premises in 2002 or 2003, the Silberman affirmation fails to point to any negligence in the Trilivas Defendants' repair efforts. Furthermore, Plaintiff has failed to establish what, if any, further repairs Trilivas Defendants should have made to their property and how their failure to do so was the proximate cause of the Plaintiff's accident. Trilivas Defendants argue that the seam was located on Trilivas Defendants property and the grade

differential was located at the seam thus Trilivas Defendants replacement of their sidewalk flag would have resulted in the complete removal of the defect. However, Plaintiff testified that her accident was caused by a "pothole".

Plaintiff testified in relevant part as follows:

> Q: All right. And what did you trip on, if you know?
> A: There was, like, a pothole, and my foot got caught in the hole.
> (NYSCEF Doc. No. 192 pg 32-33 lines 24-25 and 2-3)
>
> Q: Could you describe for me the size of this pothole?
> A: Okay. The depth was about 2 inches, and the length I would say, between 1 or 2 feet.
> Q: And was this pothole circular or some other shape?
> A: It was, like, an oval.
> Q:And earlier you had testified that the area that you had fell, the areas was concrete; is that correct?
>
> THE INTERPRETER: She said cement.
> MR. Guter: I'm sorry. Cement.
> MS. Crippen: Yeah, she did.
> (NYSCEF Doc. No. pg 34 liens 12-25).

Thus, while Silberman may have ascertained that the seam of the sidewalk marked the beginning of the vertical grade differential, Plaintiff cites that she was caused to trip due to a pothole in the cement that was oval shaped and 2 inches in length not the seam between the two sidewalk flags. Nothing in Plaintiff's testimony even suggests that her accident was caused by the seam between the two sidewalk flags or that her foot even came into contact with the seam. Furthermore, Silberman fails to establish that the seam was maintained in an unreasonable condition. Thus, Trivilas Defendants' motion is granted.

In opposition to Plaintiff's motion, Radovic Defendants argue as they did in their motion that the relevant portion of the sidewalk is located within the passenger waiting area for the bus stop which is the responsibility of third-party defendant the City. Furthermore, Radovic Defendants argue Silberman's opinion that the defect was caused by "shoddy repairs" fails to take into account the testimony of the Radovic Defendants witness that she observed that the relevant portion of the sidewalk was heavily used by buses and trucks driving onto the sidewalk and curb. Furthermore, Radovic Defendants contend there is an issue of Plaintiff's credibility which creates an issue of fact as to the nature and location of the defect.

In reply, Plaintiff contends that Radovic Defendants failed to submit evidence that it was the City's responsibility to maintain the sidewalk as Hernandez's testimony fails to establish the same. Furthermore, Plaintiff argues that Silberman's affirmation was meant to demonstrate that the defect

was longstanding and "shoddily" patched up unsuccessfully prior to the fall in violation of several statutes, codes and regulation which ultimately created the condition. Finally, Plaintiff contends Radovic Defendants' characterization of Plaintiff's credibility is unfounded.

There is no dispute that a significant portion of, if not all of, the alleged defect falls within the boundary of the premises owned by Radovic Defendants. There is also no dispute that the exemption set forth in 7-210 is not applicable to Radovic Defendants as the premises is not owner occupied. There is also no dispute that "[t]he City of New York, not the NYCTA, is responsible for the maintenance of bus stops within the City of New York, including the roads, curbs, and sidewalks attendant thereto" (citing *Davila v New York City Tr. Auth. et al.,* 66 AD3d 952, 953 [2d Dept 2009]). Thus, there remains an issue of fact as to whether the subject defect fell within the portion of the sidewalk that is subject to maintenance by the City.

In light of the fact that Trivilas Defendants have established their entitlement to summary judgment by establishing they did not own the premises abutting the defective sidewalk flag and that they did not cause or create the condition. It follows that Tung Thong's motion for summary judgment should also be granted where there has been no evidence presented to support a theory that Tung Thong caused or created the condition as it existed prior to Tung Thong's execution of the lease and possession of the premises. While Radovic Defendants submitted evidence to indicate that trucks were driving on the sidewalk there has been no proof submitted to demonstrate that those trucks were invited to the Premises by Tung Thong, that they were there for the benefit of Tung Thong, or that there presence caused the alleged defect. Therefore it is,

ORDERED, that motion sequence numbers 8 and 11 are **granted**; and it is further

ORDERED, that motion sequence numbers 9 and 10 are **denied**, as there exists an issue of fact as to whether Radovic Defendants, rather than third-party defendants the City, were responsible for the maintenance of the relevant portion of the sidewalk.

The foregoing constitutes the Decision and Order of this Court.

FILED
8/18/2025
COUNTY CLERK
QUEENS COUNTY

Dated: August 18, 2025

Hon. Chereé A. Buggs, JSC