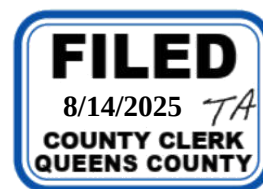


Amaro v Queens Borough Pub. Lib.
2025 NY Slip Op 35540(U)
August 14, 2025
Supreme Court, Queens County
Docket Number: Index No. 714204/2021
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

-----X
IVELISSE AMARO,

Index No.: 714204/2021

Motion Date: 6/2/2025

Motion Cal. No.: 4

Plaintiff,

Motion Sequence No.: 2

-against-

THE QUEENS BOROUGH PUBLIC LIBRARY, CITY
OF NEW YORK, NEW YORK CITY TRANSIT
AUTHORITY, NEW YORK CITY TRANSIT,
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, MTA NEW
YORK, CITY TRANSIT, MTA BUS and
METROPOLITAN TRANSPORTATION AUTHORITY
BUS COMPANY,

Defendants.

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The following efiled papers numbered 76-103 and 106-107 submitted and/or considered on this motion by Defendant the Queens Borough Public Library (hereinafter "Library"), seeking an order pursuant to CPLR §3212 granting summary judgment and dismissing all claims and cross claims by Plaintiff Ivelisse Amaro (hereinafter "Amaro") against Library.

Papers
Numbered

Notice of Motion-Affirmation in Support-	
Affidavits-Exhibits.....	EF 76-99
Affirmations in Opposition-Affidavits-Exhibits.....	EF 100-103
Affirmation in Reply-Affidavits-Exhibits.....	EF 106-107

Relevant Factual and Procedural Background

This action arises from a trip and fall incident that occurred on August 27, 2020, when Amaro allegedly sustained personal injuries as a result of encountering a hazardous condition on the sidewalk and/or curb and street near the Queens Borough Public Library at 41-17 Main Street in Flushing, New York. Amaro contends that the accident was caused by the defendants' negligence, including the Library's alleged failure to maintain the sidewalk in a reasonably safe condition.

Amaro alleges that while walking near the subject premises, her foot first encountered a hole on the curb, and then she stepped into a larger hole in the street with her other foot, causing her to lose balance and fall. During her deposition, she testified that these defects, located on the sidewalk curb and street adjacent to Kissena Boulevard, near the rear of the Library, were the direct and proximate cause of her injuries. She relies on photographs of the area to support her description of the condition and its location.

On February 14, 2025, the Library moved for summary judgment pursuant to CPLR §3212, seeking dismissal of the complaint and all cross-claims against it. The Library argues that it owed no legal duty to maintain or repair the area where the incident occurred because (1) it is not the owner of the premises or adjacent sidewalk, (2) it had no contractual or statutory obligation to repair the sidewalk or street, and (3) it neither created the alleged condition nor made a special use of the sidewalk. The Library contends that, absent such a duty, there can be no liability under a negligence theory.

In support of its motion, the Library relies on multiple forms of evidence. First, it submits the 1907 Occupancy Agreement between the Library and the City of New York, which it claims confirms that the City retained full ownership of the premises while merely granting the Library the right to occupy the building for library purposes. The Library emphasizes that the agreement does not transfer sidewalk maintenance responsibilities to it and, in fact, provides that any major repairs or alterations must be approved and funded by the City.

Second, the Library provides admissions by the City, including a Notice to Admit and a prior verified answer in a separate but factually similar matter (*Lee v. City of New York*, Sup Court, Queens County, Index No. 704651/2017), in which the City acknowledges ownership of the sidewalk and premises at 41-17 Main Street. The Library argues these admissions confirm the City, not the Library, bears responsibility for sidewalk maintenance under Administrative Code §7-210, which imposes liability on owners of property abutting a sidewalk for injuries caused by a failure to maintain the sidewalk in a reasonably safe condition.

Additionally, the Library cites the City of New York's official website, which states that the City is responsible for installing, maintaining, and repairing sidewalks adjacent to City-owned property, including libraries, public schools, and agency buildings. The Library maintains that this evidence confirms its lack of a legal or contractual obligation to perform structural repairs on the sidewalk or street.

To address whether it may have otherwise assumed a duty through its conduct, the Library points to the deposition testimony of its Facilities Operations Coordinator, Richard Passade (NYSCEF Doc No. 83). Mr. Passade testified that the Library does not employ anyone responsible for sidewalk repairs and that custodial staff only clean and sweep exterior areas, including sidewalks. He affirmed that neither he nor the maintainers inspect for structural sidewalk defects. While Passade noted that if a visibly unsafe condition were observed, he would notify the City via 311, he recalled no such complaints or observations during 2020 for the subject sidewalk.

The Library further argues that it neither created the alleged dangerous condition nor made any special use of the sidewalk. It asserts that the sidewalk is public, used by all pedestrians, and not subject to the Library's exclusive control. The Library contends there is no evidence of any installation, structure, or other usage that would meet the legal threshold for special use liability.

In opposition, Amaro submits an affirmation arguing that triable issues of fact preclude summary judgment. She contends that the Library failed to meet its prima facie burden because it did not submit evidence of specific sidewalk inspections by a person with firsthand knowledge or records establishing the absence of actual or constructive notice. According to Amaro, the Library's reliance on general custodial duties and limited inspections for cleanliness is insufficient to rule out notice or control.

Crucially, Amaro also asserts that the Library assumed a duty of care based on its contractual relationship with the City. She invokes the exception in *Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 139 [2002] to the general rule, arguing that the 1907 agreement between the Library and the City is sufficiently comprehensive to displace the City's responsibility and create an independent duty owed by the Library to pedestrians such as herself.

Amaro maintains that under the agreement, if a repair was needed, the Library was authorized to seek funds from the City to address the condition, implying that the Library had a proactive obligation to inspect and report hazards. She also claims that the Library failed to document or demonstrate compliance with such duties in this instance, creating a factual dispute over the scope of its responsibilities.

In its reply, the Library disputes Amaro's assertions and reaffirms that the crux of its motion rests not on the issue of notice, but on the absence of any legal duty to repair the sidewalk. It reiterates that Amaro has not contested the City's ownership of the property or the inapplicability of Administrative Code §7-210 to the Library. Nor, the Library asserts, has Amaro demonstrated that it assumed a duty through special use or creation of the hazard.

Further, the Library argues that the 1907 agreement is not "comprehensive and exclusive" in the sense contemplated by *Palka v Servicemaster Mgt. Services Corp.*, 83 NY2d 579, 583 [1994], because it is vague, outdated, and fails to impose any affirmative duty to inspect or repair sidewalks. The agreement, the Library notes, lacks specificity regarding sidewalk maintenance and instead provides that the Library shall not make repairs unless special appropriations are provided by the City. As such, the Library maintains that it does not entirely displace the City's duty and thus cannot give rise to tort liability under the *Espinal* line of cases.

Finally, the Library notes that the legal and factual circumstances in this case closely mirror prior rulings (*Lee v. City of New York*, Sup Court, Queens County, Index No. 704651/2017; *Ledbetter v City of New York* [Sup Ct, Queens County 2018]; *KW v. The City of New York*, Sup Ct, Queens County, Index Number 703896/2018), in which Queens County Supreme Court dismissed claims against the Library involving similar trip and fall incidents adjacent to library property. In each case, the court found the City retained primary responsibility for the sidewalk, and that the Library's custodial role did not create a duty to repair or maintain the sidewalk.

In light of the above, the Library contends that it is entitled to judgment as a matter of law, and that all claims and cross-claims against it should be dismissed with prejudice.

Law and Application

CPLR §3212 provides:

(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion...

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*see Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). “Once a prima facie showing has been made, however, 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 which require a trial of the action” (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; citing *Zuckerman v City of New York*, 49 NY2d at 562 [1980]). Summary judgment is a drastic measure that deprives a litigant of his or her day in court, and it should only be employed when there is no doubt as to the absence of triable issues (*see 114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC*, 178 AD3d 757, 759 [2d Dept 2019]; *Castlepoint Ins. Co. v Command Sec. Corp.*, 144 AD3d 731, 733 [2d Dept 2016]; *Doize v. Holiday Inn Ronkonkoma*, 6 A.D.3d 573, 774 N.Y.S.2d 792 [2nd Dept. 2004]). “In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party” (*see Moonilal v R.C. Church of St. Mary Gate of Heaven*, 225 AD3d 592, 593 [2d Dept 2024]; citing *Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023]; *see also Adams v Bruno*, 124 AD3d 566, 567 [2d Dept 2015]).

Upon reviewing the records, this Court finds that the library established prima facie that they owe no duty to maintain or inspect the area where the incident occurred.

First, there is no contest that the library is not the owner of the premises or the adjacent sidewalk, the City is.

Second, “Generally, liability for injuries sustained as a result of a dangerous condition on a public sidewalk is placed on the municipality, and not on the owner of the abutting land” (*see Byrams v Hamilton*, 234 AD3d 917, 918 [2d Dept 2025]; citing *James v Blackmon*, 58 AD3d 808 [2d Dept 2009]; *Hausser v Giunta*, 88 NY2d 449, 452-453 [1996]; *Aracena v City of New York*, 136 AD3d 717, 718 [2d Dept 2016]). “However, liability may be imposed on the abutting landowner where the landowner either affirmatively created the dangerous condition, voluntarily but negligently made repairs to the sidewalk, created the dangerous condition through a special use of the sidewalk, or violated a statute or ordinance expressly imposing liability on the abutting landowner for a failure to maintain the sidewalk” (*see Id* at 918; citing *James v Blackmon*, 58 AD3d 808 [2d Dept 2009]; *Hausser v Giunta*, 88 NY2d 453 [1996]; *Kuritsky v Meshenberg*, 211 AD3d 834, 835 [2d Dept 2022]). Here, since the library is not the abutting landowner, no liability can be imposed on the library.

Third, “Generally, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party. However, a party that enters into a contract to render services may be said to have assumed a duty of care, and thus, be potentially liable in tort to third persons, where (1) the contracting party, in failing to exercise reasonable care in the performance of its duties, launches a force or instrument of harm, (2) the plaintiff detrimentally relies on the continued performance of the contracting party's duties, or (3) the contracting party has entirely displaced

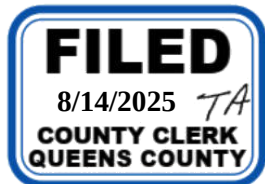
the other party's duty to maintain the premises safely" (see *H. B. v Town of Oyster Bay*, 236 AD3d 620, 622 [2d Dept 2025]). In the case at hand, since Amaro did not allege facts in his amended complaint or bill of particulars that would establish the possible applicability of any of the Espinal exceptions, the Library, in establishing their prima facie entitlement to judgment as a matter of law, were not required to affirmatively demonstrate that these exceptions did not apply (see *Laronga v Atlas-Suffolk Corp.*, 164 AD3d 893, 896 [2d Dept 2018]). In Opposition, Amaro failed to raise a triable issue of fact as to whether the library has entirely displaced the City's duty to maintain the premises safely. Contrary to Amaro's contentions, here, in stark contrast to *Palka v Servicemaster Mgt. Services Corp.*, 83 NY2d 579, 589 [1994], the very "end and aim" of the 1907 agreement was clearly not that the library becomes the sole privatized provider for a safe and clean library premises. Nowhere in the 1907 agreement even mentioned the sidewalk adjacent to the library, let alone allocating the duty to inspect or maintain the sidewalk to the library. This Court finds that the 1907 agreement was not so comprehensive and exclusive as to displace the City's duty to inspect and maintain the premises safely (see *Sperling v Wyckoff Hgts. Hosp.*, 129 AD3d 826, 827 [2d Dept 2015]).

Fourth, "[a] defendant owner or entity who is responsible for maintaining a premises who moves for summary judgment in a slip-and-fall or trip-and-fall case involving the property has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it" (see *Przywalny v New York City Tr. Auth.*, 69 AD3d 598, 598 [2d Dept 2010]). Here, this Court finds that Amaro's argument that the library has not met its initial burden establishing that it did not have actual or constructive notice, since no evidence showing when the area in question was last cleaned or inspected relative to the time when Amaro fell is without merit. The library is not the owner of the premises or the sidewalk and has no duty to either maintain or inspect the adjacent sidewalks. Accordingly, it is hereby

ORDERED, that the Library's motion for summary judgment is granted in its entirety, Amaro's complaint as against the Library is hereby dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: August 14, 2025

A handwritten signature in black ink, appearing to read "Chereé A. Buggs". Below the signature is a horizontal line, and underneath that line, the text "Hon. Chereé A. Buggs, JSC" is printed in a black serif font.

Hon. Chereé A. Buggs, JSC