

**Evart v 200 Madison Owner, LLC**

2026 NY Slip Op 30145(U)

January 14, 2026

Supreme Court, New York County

Docket Number: Index No. 152436/2015

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

CLAUDIA EVART,

Plaintiff,

- v -

200 MADISON OWNER, LLC, GEORGE COMFORT &  
SONS, INC, TOWN SPORTS INTERNATIONAL,  
LLC, CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC,

Defendants.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC

Plaintiff,

-against-

TRIUMPH CONSTRUCTION CORP.

Defendant.

-----X

INDEX NO. 152436/2015  
MOTION DATE 01/12/2026  
MOTION SEQ. NO. 008 009 011

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595669/2016

The following e-filed documents, listed by NYSCEF document number (Motion 008) 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 226, 269, 273, 274, 280 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 222, 223, 224, 225, 227, 270, 275, 276, 279 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 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, 271, 272, 277, 278 were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 008, 009 and 011 are consolidated to disposition.

Defendants 200 Madison Owner LLC and George Comfort & Sons, Inc. (collectively

“200 Madison”)’s motion (MS008) for summary judgment is granted. Defendant Town Sports

International LLC (“Town”)’s motion (MS009) for summary judgment is granted. Third party defendant Triumph Construction Corp. (“Triumph”)’s motion (MS011) for summary judgment dismissing Consolidated Edison (“ConEd”)’s third-party complaint is granted in part and denied in part.

## Background

This trip and fall action arises out of an accident involving plaintiff on March 13, 2012. Plaintiff contends that she tripped and fell on a defective grate located on the sidewalk in front of a building owned by 200 Madison. Defendant Town was the tenant and operated a gym at the location in front of where the accident took place.

Plaintiff testified that the accident happened around 9 or 9:30 p.m. right in front of a New York Sports Club (NYSCEF Doc. No. 215 at 21). She was going to this gym when her foot got caught in a grate embedded in the sidewalk (*id.* at 22, 29). Plaintiff added that her sneaker got caught in the grate (*id.* at 29). She insisted that there was a huge gap in the grate that was pushed down and so there was a differential in height between the sidewalk and the grate (*id.* at 32-33).

## MS008

200 Madison moves for summary judgment on the ground that it does not own the sidewalk grate and that the grate sits above an electrical transformer beneath the sidewalk. It points to photographs that plaintiff took which it claims shows that this particular area is owned by defendant ConEd. 200 Madison argues that there are permits from the Department of Transportation that show that ConEd got permission to install high voltage transformers in this part of 200 Madison Avenue.

In opposition, plaintiff argues that 200 Madison did not show any evidence that it did not create the dangerous condition that caused plaintiff's fall. She maintains that 200 Madison was unable to point to any inspection protocol concerning the grate.

In reply, 200 Madison emphasizes that the law clearly puts the responsibility for maintenance on ConEd and that it cannot be held liable.

“New York City Department of Transportation Highway Rule 34 (RCNY § 2-07), which governs the maintenance and repair of sidewalk grates, places maintenance and repair responsibilities on the owners of covers or gratings. Indeed, 34 RCNY § 2-07(b)(1) states that the owners of covers or gratings on a street are responsible for monitoring the condition of the covers and gratings and the area extending twelve inches outward from the perimeter of the hardware. Further, 34 RCNY § 2-07(b)(2) requires that the owners of covers or gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover or grating” (*Hurley v Related Mgt. Co.*, 74 AD3d 648, 649 [1st Dept 2010] [dismissing plaintiff's claim against property owners where plaintiff slipped on sidewalk grate owned by ConEd]).

Here, plaintiff testified that she tripped and fell on a grate that was located right above machinery owned by ConEd. The photographs submitted on this record make clear that 200 Madison has no liability (NYSCEF Doc. No. 221) under the case law cited above. In fact, in MS011 (discussed below), ConEd contends that it hired third-party defendant Triumph to install the electrical distribution facilities and that Triumph's storage of heavy equipment on the grate caused the defective condition. On this record, there seems to be no dispute that 200 Madison does not own the grate and, based on the statute cited above, 200 Madison had no duty for the

grate or the 12-inch perimeter surrounding it. That 200 Madison did not show inspection reports is beside the point—it never had a duty to plaintiff to maintain the grate. Plaintiff did not sufficiently dispute that ConEd owns the grate or the clear caselaw absolving a property owner under these circumstances.

**MS009**

Town moves for summary judgment on similar grounds as 200 Madison. It also claims that as the tenant of the property in question, it has no responsibility for any repairs or maintenance of the subject sidewalk.

Plaintiff raises many similar arguments she asserted in opposition to 200 Madison's motion.

For the reasons stated above, the Court dismisses plaintiff's case as against defendant Town. Town had no responsibility to maintain or repair the sidewalk in question, much less to maintain the grate upon which plaintiff says she falls.

**MS011**

In this motion, Triumph observes that ConEd brought claims against it for negligence, contractual indemnification and breach of contract. It maintains that it did not cause the accident because it did not create the conditions in the sidewalk grate that allegedly caused plaintiff's injuries. Triumph claims that the work it performed was on the roadway itself, i.e. Madison Avenue, and not upon the sidewalks or the grates.

In opposition, ConEd emphasizes that although Triumph was contracted to excavate the street to replace obstructed pipes, Triumph stored heavy equipment on the grates that may have

caused the dangerous condition. ConEd points to photographs that it claims shows that Triumph stored heavy items and barricades on the grates (NYSCEF Doc. Nos. 263-67).

In reply, Triumph argues that ConEd did not demonstrate that Triumph's work at the site caused the dangerous condition. It characterizes ConEd's claims as mere conjecture.

The Court grants Triumph's motion but only to the extent that the breach of contract claim is severed and dismissed. That cause of action seems to relate to allegations concerning the failure to procure insurance. ConEd did not directly address this point in its opposition and so the Court dismisses this claim.

However, the remaining claims—indemnification and negligence—survive. This Court's role in a motion for summary judgments is to assess whether there a material issues of fact. Here, ConEd pointed to multiple photographs showing that Triumph placed equipment on (and next to) the grates. And at Triumph's deposition, its witness admitted that equipment like a generator (weighing about 50 pounds), a steel saw, and jackhammers (weighing 90 pounds) were all kept on the sidewalk right near the grates (NYSCEF Doc. No. 255 at 72, 73, 76, and 79). The point is that a fact finder could conclude that putting this heavy equipment right near or on the grates was a contributing factor in creating the dangerous condition that caused plaintiff to fall.

The Court also points out that, contrary to Triumph's papers, ConEd was not required to prove that Triumph indisputably caused the dangerous condition. ConEd merely had to show that Triumph may have contributed, in whole or in part, to the accident.

Moreover, Triumph did not submit dispositive evidence, like an expert report, to show that even if it did store these items on the grates, that it could not have caused issues with the

grate. This Court is not in a position to speculate as to the weight required to “depress” or lower a grate such that it could cause the condition about which plaintiff complains.

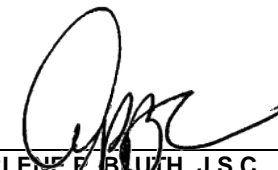
Accordingly, it is hereby

ORDERED that defendants 200 Madison Owner LLC and George Comfort & Sons, Inc. motion (MS008) for summary judgment is granted and the Clerk is directed to enter judgment accordingly in favor of these defendants and against plaintiff along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that defendant Town Sports International LLC (“Town”)’s motion (MS009) for summary judgment is granted the Clerk is directed to enter judgment accordingly in favor of this defendant and against plaintiff along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that third party defendant Triumph Construction Corp. (“Triumph”)’s motion (MS011) for summary judgment dismissing Consolidated Edison (“ConEd”)’s third-party complaint is granted only to the extent that the breach of contract claim is severed and dismissed.

1/14/2026  
DATE

  
ARLENE F. BLUTH, J.S.C.

|                       |   |   |
|-----------------------|---|---|
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED              | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
|                       | <input type="checkbox"/> GRANTED                    | <input type="checkbox"/> GRANTED IN PART                  |
|                       | <input type="checkbox"/> DENIED                     | <input checked="" 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                        |