

Holmes v Consolidated Edison Co. of N.Y. Inc.

2026 NY Slip Op 30149(U)

January 14, 2026

Supreme Court, New York County

Docket Number: Index No. 156868/2019

Judge: Carol Sharpe

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL SHARPE PART 52M

Justice

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INDEX NO. 156868/2019

CHARLES DONTE HOLMES,

MOTION DATE 08/13/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

CONSOLIDATED EDISON COMPANY OF NEW YORK
INC., CONSOLIDATED EDISON, INC., CITY OF NEW YORK

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, defendant City of New York's ("The City") motion for summary judgment pursuant to CPLR 3212 (b) on the grounds that it did not receive prior written notice of the alleged defective sidewalk condition, as required by New York Administrative Code § 7-201 is granted.

This action was commenced by plaintiff filing a summons and complaint on July 12, 2019, against The City, Consolidated Edison Company of New York, Inc., and Consolidated Edison, Inc. (collectively "Con Ed"), for injuries he allegedly sustained on March 27, 2019, when he fell while roller skating on the sidewalk located on the east side of Amsterdam Avenue between West 178th Street and West 179th Street, New York County, when the wheel of his roller-skate hit a defective condition in the sidewalk abutting an electrical metal rectangular plate. Issued was joined by the filing of answers by Con Ed on August 28, 2019, and by The City on October 10, 2019. This action was discontinued with prejudice including all crossclaims and counterclaims, and without costs as against Con Ed pursuant to the Stipulation of Discontinuance with Prejudice (NYSCEF Doc. #30).

In support of its motion, The City submitted, among other things, plaintiff's 50-h hearing transcript; transcript of plaintiff's examination before trial along with photographs; and records searches and

accompanying affirmations from the Department of Parks and Recreation (“DPR”), and the Department of Transportation (“DOT”).

Plaintiff opposed the motion on the grounds that The City has not made a showing of *prima facie* entitlement to summary judgment and triable issues of fact remain as the records submitted by The City are not of the area where plaintiff alleges the incident occurred. The City has failed to submit a statement of material facts in support of its motion as required by 22 NYCRR § 202.8-(g).

Statement of Material Facts

22 NYCRR § 202.8-(g)(a) provides that “upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.” Former Uniform Rules for Trial Courts (22 NYCRR) § 202.8-g (repealed by Admin Order of Chief Admin Judge of Cts AO/103/2025) did not impose mandatory requirements, and the court here did not direct the parties to submit such statements (*see Churchill Owners Corp. v Kent*, 223 AD3d 558, 559, 202 N.Y.S.3d 110 [1st Dept 2024]). (*McGregor v Manhattan Nursing Home Realty, Inc.*, 242 AD3d 584, 2025 NY Slip Op 05773, *1 [1st Dept 2025]). Here, The City’s moving papers contained the relevant facts pursuant to CPLR 2214 and 22 NYCRR § 202.8(c).

Summary Judgment Standard

“The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law.” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). “Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the proponent makes the required *prima facie* showing, the burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial (CPLR 3212(b); *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]).

“It is well established that summary judgment may not be granted whenever the pleadings raise clear, well-defined and genuine issues.” (*Falk v Goodman*, 7 NY2d 87, 89 [1959]). Upon a motion for summary judgment, the role of the court is issue finding, not issue determination. (*Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Esteve v Abad*, 271 AD 725, 727 [1st Dept 1947]). The motion should be denied where different conclusions can reasonably be drawn from the evidence (*Sommer v Federal Signal Corp.*, 79 NY2d 540 [1992]). All evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party’s favor (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 [1st Dept 2010]). Issues of credibility are to be resolved at trial, not by summary judgment (*Castillo v New York City Tr. Auth.*, 69 AD3d 487 [1st Dept 2010]).

The City moved for summary judgment on the grounds that it did not have written notice of a defective condition on the sidewalk pursuant to New York City Administrative Code §7-201(c) (“Admin Code”). Admin Code §7-201(c)(2) provides in pertinent part that:

No civil action shall be maintained against the city...unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice, or where there was previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency, or there was written acknowledgement from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

Admin Code §7-201(c)4 further provides that “[w]ritten acknowledgement shall be given by the department of transportation of all notices received by it.” The acknowledgement requirement is sufficient to satisfy the Pothole Law where “[an]other agency is performing the function (normally performed by DOT) of remedying an unsafe condition in the roadway...” and “...a written statement showing that the city agency responsible for repairing a condition had first-hand knowledge both of the existence and the dangerous nature of the condition...” (*Bruni v City of N.Y.*, 2 NY3d 319, 325 [2004]).

The City has the initial burden of establishing that it did not have prior written notice of a defect (*see Yarborough v City of N.Y.*, 10 NY3d 726 [2008]). “Prior written notice of a defect is a condition precedent which plaintiff is required to plead and prove to maintain an action against the City” (*Katz v City of New York*, 87 NY2d 241, 243 [1995]). “The failure to demonstrate prior written notice leaves plaintiff without legal recourse against the City for its purported nonfeasance or malfeasance in remedying a defective sidewalk. Because this prior written notice provision is a limited waiver of sovereign immunity, in derogation of common law, it is strictly construed [internal citation omitted]” (*id.*). Prior written notice can be satisfied through the maps prepared by Big Apple, “[h]owever, verbal or telephonic communication to a municipal body that is reduced to writing does not satisfy the prior written notice requirement, even if the writing includes a service report” (*Carney v City of N.Y.*, 232 AD3d 535, 536 [1st Dept 2024]; *Harvey v Henry 85 LLC*, 171 AD3d 531 [1st Dept 2019], *lv. denied*, 33 NY3d 911 [2019] [“service report that was the result of a verbal or telephonic communication received through the City’s 311 system, is insufficient to raise an issue of fact as to prior written notice.”]; *Stoller v City of N.Y.*, 126 AD3d 452, 452 [1st Dept 2015] [“The City’s records of citizen reports of two potholes in the area and FITS reports of repairs made to potholes in front of a building on Canal Street did not provide the City with prior written notice of the particular defect in the crosswalk where plaintiff fell [internal citation omitted].”]; *Kapilevich v City of N.Y.*, 103 AD3d 548 [1st Dept 2013]). “[P]ermits issued to other parties do not show notice of the defective condition.” (*Haulsey v City of N.Y.*, 123 AD3d 606, 607 [1st Dept 2014]).

Here, The City submitted records search results from DPR and DOT, including a Sidewalk Search Response for Amsterdam Avenue between West 178th Street and 179th Street, the side of the street which includes Highbridge Park (NYSFEC Doc. #48), which showed two permits for work in the vicinity, including an emergency street opening permit issued on August 15, 2018, for emergency repairs to the sewer at the intersection of Amsterdam Avenue and West 178th Street from August 8, 2018, to September 7, 2018 (*id.* at p. 10). This repair included concrete work on the sidewalk; however, this defect was repaired more than six months prior to the alleged incident and plaintiff has not provided any evidence that the repair created an immediate hazard (*id.*). The second permit for work in the vicinity was issued on September 10, 2018, for

emergency water repairs to the roadway of Amsterdam Avenue and West 179th Street from September 5, 2018, to October 10, 2018 (*id.* at p. 15). This repair also included concrete work on the sidewalk, however, this defect was repaired more than five months prior to the alleged incident and plaintiff has not provided any evidence that the repair created an immediate hazard (*id.*).

Furthermore, according to the DOT Memorandum and General Bridge Report (NYSFEC Doc. #48), the sidewalk is an overpass located at Amsterdam Avenue between West 178th Street and West 179th Street, on the side of Highbridge Park, “does not fall under DOT Bridges Jurisdiction. It is owned and maintained by the Port Authority Bridges & Tunnels” of New York and New Jersey (*id.* at p. 1-3). Here, The City established that it did not have prior written notice of the defect that caused plaintiff’s accident as is required by Admin Code §7-201(c)(2) as none of the reports received and produced during the various searches satisfied the writing requirement.

Where The City establishes that it lacked prior written notice under the Admin Code §7-201(c)(2), the burden shifts to the plaintiff to demonstrate the applicability of one of two recognized exceptions to the prior written notice law: “that the municipality affirmatively created the defect through an act of negligence or that a special use resulted in a special benefit to the locality” (*Yarborough*, 10 NY3d at 728). The affirmative negligence in creating the defect is “limited to work by The City that immediately results in the existence of a dangerous condition” (*Bielecki v City of N.Y.*, 14 AD3d 301 [1st Dept 2005]); *Oboler v City of N.Y.*, 8 NY3d 888, 890 [2007] [summary judgment granted where “plaintiff presented no evidence of who last repaved this section of the roadway before the accident, when any such work may have been carried out, or the condition of the asphalt abutting the manhole cover immediately after any such resurfacing.”]. The repair must be close in time to have created the “immediate” dangerous condition (*see Trentman v City of N.Y.*, 162 AD3d 559, 559-560 [1st Dept. 2018] [summary judgment granted where “evidence that defendant repaired a defect several months before plaintiff’s accident does not provide a basis for an inference that the repair resulted in an immediately hazardous condition.”]; *Civic v City of N.Y.*, 215 AD3d 445, 446 [1st Dept 2023] [“Plaintiff’s claim that the City’s alleged negligent repair of a defect at the location several months before the incident resulted in an immediate hazardous condition was speculative.”]. That “the defendant

repaired a defect three months prior to the subject accident in the general vicinity of the plaintiff's fall does not provide a basis for an inference that the repair immediately resulted in the existence of a dangerous condition" (*Smith v City of New York*, 228 AD3d 472, 473 [1st Dept 2024]).

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ORDERED, that the summary judgment motion filed by The City is granted in its entirety; it is further

ORDERED, that the complaint is dismissed against The City with prejudice; it is further

ORDERED, that, this action is discontinued with prejudice; and it is further

ORDERED, that The City shall serve a copy of this Decision and Order with Notice of Entry upon all parties within fifteen (15) days of the date herein and file proof of said service.

This constitutes the Decision and Order of the Court.

ENTER:

1/14/2026
DATE


HON. CAROL SHARPE, J.S.C.

HON. CAROL SHARPE
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

J.S.C.
 OTHER
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: