

Gina v New Hope Family Worship Ctr.

2026 NY Slip Op 30292(U)

January 16, 2026

Supreme Court, Kings County

Docket Number: Index No. 521158/2021

Judge: Lisa S. Ottley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

-----X
NOREEN GINA,

Plaintiff,

Index # 521158/2021

-against-

Decision and Order

NEW HOPE FAMILY WORSHIP CENTER,
PHILADELPHIA WESLEYAN CHURCH OF CONEY
ISLAND and 2947 SHORE PKWY LLC,

Motion Seq. # 3

Defendants.
-----X

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Summary Judgment submitted on May 5, 2025.

Papers	Numbered
Notice of Motion and Affirmation.....	1, 2 [Exh. A-L]
Affirmation/Affidavit in Opposition.....	4 [Exh. A-I], 5
Reply Affirmations.....	6 [Exh. A-E]
Memorandum of Law.....	3

Plaintiff, Noreen Gina, commenced this action due to a trip and fall as a result of a wooden block affixed and nailed to a sidewalk, which occurred in front of the premises located at 2804 Mermaid Avenue, in Brooklyn, New York, on or about June 15, 2021. The defendant, 2947 Shore Parkway LLC (hereinafter, “2947 Shore/vacant lot”), is the owner of the vacant lot located at said address. The moving defendant, New Hope Family Worship Center, (hereinafter, “New Hope Church”), owns the property adjacent to the vacant lot, located at 2802 Mermaid Avenue.

The moving defendant, New Hope Church, moves pursuant to CPLR §3212 for an order granting summary judgment dismissing plaintiff’s complaint and all cross-claims, on the grounds that it had no liability for the happening of this accident since the wooden block was not located on the sidewalk in front of its property, but rather on the sidewalk in front of 2947 Shore’s vacant lot property; it did not place the wooden block on the sidewalk and did not direct, supervise, or manage said placement; it did not have a statutory duty to maintain the sidewalk; it did not cause or create the allegedly dangerous condition on the sidewalk; it did not have notice of the allegedly dangerous condition; and it did not have a special use of the sidewalk. Plaintiff and co-defendant, 2947 Shore, oppose New Hope Church’s motion on the grounds that it has failed to make a prima facie showing entitling it to summary judgment as there are issues of fact for a trier of fact to determine as to New Hope Church causing and creating the defect and having special use of the abutting sidewalk.

Discussion

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, *Grassick v. Hicksville Union Free School District*, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). “Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action.” See, *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. See, *Marine Midland Bank, N.A. v. Dino v. Artie’s Automatic Transmission Co.*, 168 A.D.2d 610 (2nd Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, *CPLR 3212[b]*; *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986].

In support of its motion, New Hope Church provided photographs of its property, 2947’s vacant lot property, and the wooden block to demonstrate that the wooden block was in front of 2947 Shore’s vacant lot property at the time of the accident. These photographs also included a two-plywood structure on the vacant lot bordering the front side gate of New Hope Church, another piece of plywood on the ground at the foot of the two-plywood structure, and two BBQ drums with each affixed to a side of New Hope Church’s front gate. In further support, New Hope Church provided the deposition testimony of its Senior Pastor, Dr. Anthony M. Graham, Ph.D., who testified that the church has nothing to do with the maintenance or administration of anything that goes on within or outside of the vacant lot. Dr. Graham further testified that the members of the community, possibly homeless, enter the vacant lot and occupy the property; he has observed individuals doing many activities in the vacant lot which includes eating, cooking, and playing games; he has not seen any members of his Church congregating outside of the vacant lot; he does not know who placed the wooden block and no one from the Church reported a piece of wood to have been on the sidewalk; the Church had a campus pastor on its property daily who is responsible to maintain the its property; the Church did not do any construction to the exterior of its property on the date of this accident or within 6 months prior to this accident; and he never saw the wooden block outside the vacant lot before the accident.

New Hope Church also provided the deposition testimony of the owner of 2947 Shore, Joyce Tai, who testified that the wooden block was on her entity’s property at the time of the accident; she was not aware of the Church having used her entity’s property in any manner; she did not know who placed a plywood structure onto her entity’s property and never recalled seeing the structure during her periodic visits to the property; she never witnessed construction taking place at the Church during her periodic visits to her entity’s property; she did not recall the Church having performed any construction that would have resulted in the wooden planks having been on the sidewalk; her entity never hired a caretaker or a maintenance person to manage the property after purchasing the property; and she did not observe any construction taking place when she visited her entity’s property following the accident. Lastly, New Hope Church provided the deposition testimony of the plaintiff, in which she testifies that the accident took place in front of an empty lot that is not located on the Church’s property.

In opposition, the plaintiff and 2947 Shore argue that although the wooden block was located in front of 2947 Shore's property, New Hope Church caused and created said wooden block and utilized the sidewalk area located in front of the adjacent vacant lot for its own use and benefit. In support, they have offered photographs depicting additional wooden boards and pieces located within the property of New Hope Church, and significant woodworking activities taking place on the lower level of said property. In further support, they have offered an affidavit of non-party witness, Denneshia Allen, who was accompanying the plaintiff at the time of the accident. According to Ms. Allen, she has observed New Hope Church having BBQs and functions to collect and distribute used clothing where they set up and secure canopies and tents in the exact area where these wooden planks were secured to the sidewalk area. The plaintiff and 2947 Shore have also provided "google maps" photographs of the subject location from October 2019 and September 2021, depicting an erected canopy and various barbeque drums in front of the vacant lot. The plaintiff and 2947 Shore also submitted an affidavit from plaintiff attesting to having seen and heard of various church related events for the community being held and sponsored by New Hope Church, wherein canopies and BBQs are set up and affixed to sidewalk with wood. The plaintiff and 2947 Shore have provided photographs depicting a BBQ drum in front of the vacant lot and affixed to New Hope Church's front gate on the right side, as well as another BBQ drum affixed to New Hope Church's front gate on the left side. According to the offered deposition testimony of Ms. Tai of 2947 Shore, upon inquiry as to who installed the BBQ drums on the side of the Church, she stated "from the way it looks, it belongs to the Church...on the left side they have a similar one."

In reply, New Hope Church argues that plaintiff and 2947 Shore failed to establish that the Church had any relation to the tent/canopy, barbeque drums, and activities in front of the vacant lot shown in the "google maps" photographs since they do not depict any Church signs or persons with Church attire. In addition, New Hope Church argues that the "google maps" should be disregarded as unauthenticated since they are not time/date stamped by google, do not contain google insignia, and may have been obtained from any source.

It is fundamental that, in order to be held liable in tort, the alleged tortfeasor must have owed the injured party a duty of care. See, *Forbes v Aaron*, 81 A.D.3d 876, 918 N.Y.S.2d 118 (2nd Dept., 2011). 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, *Kydd v Daarta Realty Corp.*, 60 A.D.3d 997, 877 N.Y.S.2d 352 (2nd Dept., 2009). The principle of special use, a narrow exception to the general rule, imposes an obligation on the abutting landowner, where he puts part of a public way to a special use for his own benefit and the part used is subject to his control, to maintain the part so used in a reasonably safe condition to avoid injury to others. See, *Breland v Bayridge Air Rights, Inc.*, 65 A.D.3d 559, 884 N.Y.S.2d 143 (2nd Dept., 2009). Where none of these factors is present, a party cannot be held liable for injuries caused by a dangerous or a defective condition. See, *Sanchez v 1710 Broadway, Inc.*, 79 A.D.3d 845, 915 N.Y.S.2d 272 (2nd Dept., 2010).

Ordinarily, a defendant moving for summary judgment in a trip and fall case has the burden of establishing that it did not create the hazardous condition that allegedly caused the fall and did not have actual or constructive notice of that condition for a sufficient length of time to discover and remedy it. See, *Adzei v. Edward Builders, et.al.*, 221 A.D.3d 639, 198 N.Y.S.3d 755 (2nd Dept.,

2023). To establish the lack of constructive notice, a defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time of the accident. See, Morlan v Atlantic Westerly Co., 214 A.D.3d 787, 186 N.Y.S.3d 57 (2nd Dept., 2023). Reference to general cleaning practices is insufficient to establish a lack of constructive notice in the absence of evidence regarding specific cleaning or inspection of the area in question. See, Rong Wen Wu v Arniotes, 149 A.D.3d 786, 50 N.Y.S.3d 563 (2nd Dept., 2017).

Here, New Hope Church has not satisfied its prima facie burden that it did not cause or create the alleged defect, did not have actual or constructive notice of the alleged defect, and did not have special use of the abutting sidewalk for its own use and benefit at the time of the accident. The court finds that New Hope Church has failed to satisfy its prima facie burden as to the lack of constructive notice by not offering some evidence as to when the area in question was last cleaned or inspected relative to the time of the accident. See, Morlan v Atlantic Westerly Co., 214 A.D.3d 787, 186 N.Y.S.3d 57 (2nd Dept., 2023). New Hope Church's proffered general maintenance practice of having a campus pastor on its property daily who is responsible to maintain its property is insufficient to establish a lack of constructive notice.

The court further finds that there are triable issues of material fact as to whether New Hope Church created the alleged defect, had actual or constructive notice of the alleged defect, and had special use of the sidewalk in front of the vacant lot based on the affidavits of the plaintiff and non-party witness; deposition testimony of the plaintiff, Dr. Graham, and Ms. Tai; and photographs depicting the wooden block and adjacent plywood structures, respective properties of New Hope Church and 2947 Shore, alleged woodworking activities within New Hope Church's property, BBQ drums affixed to the left and right sides of New Hope Church's front gates, and an erected canopy/tent and various barbecue drums in front of the vacant lot.

The plaintiff and 2947 Shore's argument that the "google maps" photographs are unauthenticated since they are not time/date stamped with google insignia and may have been obtained from any source is unavailing. Pursuant to CPLR 4532-b, the court may take judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping services, a global satellite imaging site, or an internet mapping tool, if such material indicates the date it was created subject to a challenge that such material does not fairly and accurately portray that which it is being offered to prove. As such, the "google maps" photographs constitute admissible evidence through judicial notice as they contain handwritten notes of the date, they were taken by google and plaintiff has not challenged that they do not fairly and accurately portray that which they are being offered to prove.

As to plaintiff and 2947 Shore's argument that New Hope Church's motion for summary judgment is premature due to outstanding discovery, the court finds the argument unavailing especially in light of New Hope Church providing proof that it did respond to the plaintiff's combined discovery demands. A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant. See, Singh v Avis Rent A Car Sys., Inc., 119 A.D.3d 768, 989 N.Y.S.2d 302 (2nd Dept., 2014). Here, the mere hope or speculation that evidence may be uncovered during the

discovery process is insufficient to deny the motion. See, *Lopez v WS Distrib., Inc.*, 34 A.D.3d 759, 825 N.Y.S.2d 516 (2nd Dept., 2006).


Accordingly, the defendant, New Hope Church's motion to dismiss plaintiff's complaint and all cross-claims, pursuant to CPLR § 3212, is hereby denied.

Based on the foregoing, it is hereby

ORDERED, that the defendant, New Hope Church's motion to dismiss plaintiff's complaint and all cross-claims, pursuant to CPLR §3212, is hereby denied.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
January 16, 2026



HON. LISA S. OTTLEY, J.S.C.
HON. LISA S. OTTLEY

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KINGS COUNTY CLERK
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