Druhan v 1710 BWAY LLC
2026 NY Slip Op 30315(U)
January 27, 2026
Supreme Court, New York County
Docket Number: Indeex No. 154255/2023
Judge: Richard Tsai
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. RICHARD TSAI** **PART** **21**

Justice

----------X

ANN DRUHAN,

Plaintiff,

- v -

1710 BWAY LLC, THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY BUS COMPANY,

Defendants.

----------X

INDEX NO. 154255/2023

MOTION DATE 12/18/2025

MOTION SEQ. NO. 001-002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 43-65, 67-68, 80-91, 114-128

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 69-79, 92-113, 129-130

were read on this motion to/for JUDGMENT - SUMMARY.

In this personal injury action, plaintiff Ann Druhan alleges that, on July 31, 2022 at approximately 7:00 p.m., she tripped and fell "on the sidewalk and metal remnants of a bicycle rack abutting the premises known as 1710 Broadway, New York, NY 10019" (exhibit A in support of motion for summary judgment by defendant City of New York [NYSCEF Doc. No. 47] at 2). At her 50-h hearing, plaintiff stated, "I tripped on the metal piece that was from the bicycle rack" (*see* Exhibit G in support of motion [NYSCEF Doc. No. 53], at 22, lines 14-15]). According to plaintiff, she had not seen anything metal affixed to the sidewalk before the accident (*id.* at 21, lines 18-20).

Now, defendants New York City Transit Authority, Metropolitan Transportation Authority and Metropolitan Transportation Authority Bus Company (collectively, the Transit Defendants) and defendant City of New York (the City) respectively move for summary judgment, arguing that they have no liability for the portion of the sidewalk where plaintiff allegedly fell, including the metal remnants of the of a bicycle rack in that area. Plaintiff and defendant 1710 Bway LLC—the latter being the admitted owner of the abutting building—both oppose the motions.

DISCUSSION

"To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party" (*Nellenback v Madison County*, 44 NY3d 329, 334 [2025] [internal citations omitted]).

I. Motion for Summary Judgment by the City (Seq. No. 001)

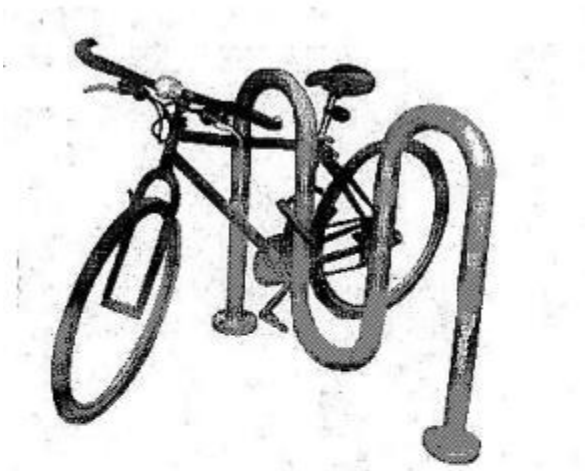
On its motion for summary judgment, the City submits extensive evidence to establish, prima facie, that: (1) the City did not own the abutting building; (2) there are "no records that NYC DOT installed or removed a bike rack at this location"; and (3) and that at most, in the two years before the subject accident, the only records of the New York City Department of Transportation performing any work in the area related to "'Center Median Repair'" (affirmation in support of Motion Seq. No. 001 [NYSCEF Doc. No. 44] ¶¶ 14, 24, 27; *see also* Exhibit J in support of Motion Seq. No. 001 [NYSCEF Doc. No. 56], affirmation of Roger Lliguicota regarding permits; Exhibit K [NYSCEF Doc. No. 57], affirmation of David C. Atik regarding ownership of abutting building; Exhibit L [NYSCEF Doc. No. 57], affirmation of David Schloss regarding title of abutting building; Exhibit N [NYSCEF Doc. No. 60], affirmation of Alison Boles regarding complaints regarding CityRack bike racks; Exhibit O [NYSCEF Doc. No. 61], affirmation of Camron Walkes regarding DOT installation and removal of bike racks; Exhibit Q [NYSCEF Doc. No. 63], affirmation of Jessica Colaizzi regarding records for DOT installation or removal of bike rack in area).

Walkes reviewed photographs of a bike rack, annexed as Exhibit A:

(*see* Exhibit P in support of motion [NYSCEF Doc No. 62]). According to Walkes, the bike rack depicted in the photograph "is not a style of bike rack installed by DOT" (Walkes affirm [NYSCEF Doc. No. 61] ¶ 5).

However, in opposition to this motion, defendant 1710 Bway LLC (1710 Bway) raises an issue of fact as the City's ownership of the bike rack.

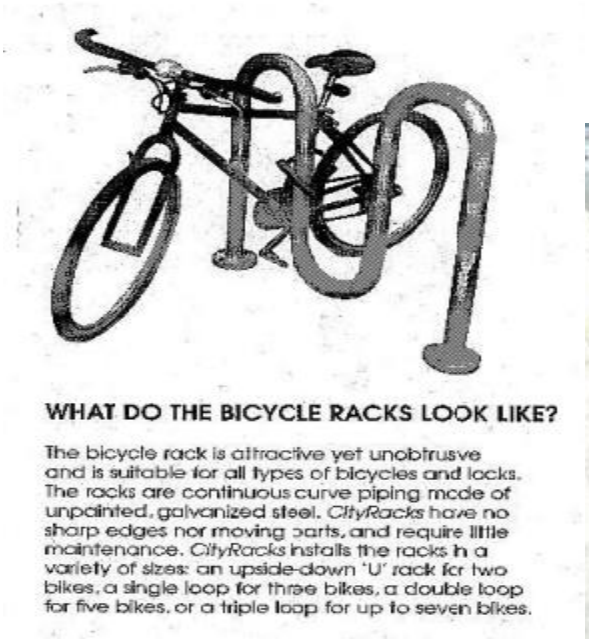
In particular, 1710 Bway LLC submits a report by the City of New York Department of City Planning, Transportation Division, dated May 1999, and titled "New York City Bicycle Parking Needs" (1710 Bway's exhibit I in opposition to Motion Seq. No. 001 [NYSCEF Doc. No. 101]). At appendix C, the report annexes the New York City Racks Program Flyer, Fact Sheet, General Guidelines and Rack Clearance Standards (*id*. at 97-101). The Flyer specifically states, "After installation, the CityRacks remain the property of the City of New York. The City assumes responsibility for the rack but not the bicycles parked at it (*id*. at 98; *see also id.* at 100 ["The DOT reserves the right to remove or not remove a CityRack"]). Most importantly, the Flyer contains illustrations of CityRacks:



WHAT DO THE BICYCLE RACKS LOOK LIKE?

The bicycle rack is attractive yet unobtrusve and is suitable for all types of bicycles and locks. The racks are continuous curve piping mode of unpainted, galvanized steel. *CityRacks* have no sharp edges nor moving parts, and require little maintenance. *CityRacks* installs the racks h a variety of sizes: an upside-down 'U' rack for two bikes, a single loop for three bikes, a double loop for five bikes, or a triple loop for up to seven bikes.

(*id.* at 98). A side-by-side comparison of the illustration of the CityRacks in the Flyer with the photograph of the bike rack shows a resemblance between the two racks:



(*compare id* with exhibit O in support of Motion Seq. No. 001 [NYSCEF Doc. No. 61] photograph of bike rack reviewed by Camron Walkes; 1710 Bway's exhibit H in opposition to Motion Seq. No. 001 [NYSCEF Doc. No. 100] Google Street View photograph from July 2021).

In reply, the City argues that 1710 Bway is "unable to say with specificity how and why the subject bicycle rack is part of CityRacks" (City's reply affirmation in further support of Motion Seq. No. 001 [NYSCEF Doc. No. 126] ¶ 18).

A bicycle rack is not part of the sidewalk for the purposes of Administrative Code § 7–210 (*Brown v 1133 E., LLC*, 236 AD3d 851, 852 [2d Dept 2025]). Viewing the evidence in the light most favorable to the non-movant, the fact that the City's own 1999 report contains pictures of a CityRack that resembles the subject bike rack is sufficient to raise an issue of fact as to whether the subject bike rack was part of the CityRacks Program, and therefore City property, and/or infrastructure that the City would have installed.

In reply, the City points to the affirmation of DOT employee Alison Boles who "personally conducted a search in the pertinent electronic databases complaints regarding CityRack bike racks at Broadway between West 54th Street and West 55th Street (on the side of 1710 Broadway)" for two years before the accident" and "revealed no records" (City's reply affirmation ¶ 18; Boles affirmation ¶ 3). To the extent that the lack of DOT records is offered to prove that the City had not caused or created the alleged condition (i.e., a remnant of a bike rack that was a purported tripping hazard), summary judgment is denied as premature (*PF2 Sec. Evaluation, Inc. v Fillebeen*, 211 AD3d 515, 516 [1st Dept 2022] [holding that denial of motion for summary judgment was appropriate where "the court would have been required to make credibility

determinations to resolve the motion" and "there was reason to believe that additional discovery and party depositions would lead to relevant evidence"]). If plaintiff can establish that the metal remnant upon which allegedly tripped was part of a bike rack installed by the City, the City would nevertheless have a duty to inspect and maintain the bike rack.

Thus, even if a nonparty had removed the bike rack or if an unknown vehicle had struck the bike rack, the City might still be held liable to maintain the area around the remnant of the bike rack in a reasonably safe condition, assuming that the City had prior written notice of the defect (which was not argued here) (*see Funkelstein v City of New York* (187 AD3d 602 [1st Dept 2020]).

Therefore, the City's motion for summary judgment is denied.

II. Motion for Summary Judgment[1] by the Transit Defendants (Seq. No. 002)

In support of their motion for summary judgment, the Transit Defendants submit the affidavit of Jaime Cho, "Associate Staff Analysis in the Bus Service Planning" for the Transit Defendants (Transit Defendants' exhibit H in support of Motion Seq. No. 002 [NYSCEF Doc. No. 78], Cho affidavit ¶ 2). Cho avers that she reviewed the Notice of Claim and photographs of the location and then conducted searches of records for the subject location (*id*. ¶¶ 5-6). Cho avers that, based on her record searches, she has concluded that the Transit Defendants: 1) do not own the property abutting the sidewalk; and 2) neither "own the bike racks located upon the subject sidewalk" nor are "responsible for direction, operation, management, control, repair or maintenance of bike racks located at the subject premises" (*id*. ¶¶ 7-8). Therefore, the Transit Defendants have established their prima facie entitlement to summary judgment.

In opposing the Transit Defendants' motion, 1710 Bway argues that "[n]othing in the underlying Motion explains the distinction between the Transit Defendants, or whether those entities are legally distinct from DOT" (1710 Bway's affirmation in opposition [NYSCEF Doc. No. 92] ¶ 24). However, it is well settled that the City and the

[1] The court notes that the Transit Defendants also moved to dismiss the claims as against them pursuant to CPLR 3211 (a) (1) and (a) (7). However, here, the evidentiary basis that the Transit Defendants put forward for having the claims dismissed as against them is the affidavit of its employee Jaime Cho. Such an affidavit of a party's employee "does not constitute 'documentary evidence' for purposes of a motion to dismiss pursuant to CPLR 3211(a)(1)" (*Bou v Llamoza*, 173 AD3d 575, 575 [1st Dept 2019]; *see also Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] ["Factual affidavits, however, do not constitute documentary evidence within the meaning of the statute"]). Therefore, the court reviews this motion by the Transit Defendants strictly as a motion for summary judgment, pursuant to CPLR 3212. And clearly, also, a factual affidavit cannot be the basis for dismissing a complaint for failure to state a claim pursuant to CPLR 3211 (a) (7) (*Henn v City of New York*, 164 AD3d 766, 767 [2d Dept 2018] ["consideration of such evidentiary materials will almost never warrant dismissal under CPLR 3211(a)(7) unless the materials establish conclusively that the plaintiff has no claim or cause of action"] [internal quotation marks and emendation omitted]).

various Transit Defendants are distinct legal entities and generally not liable for each other's acts (*see e.g. Chandler v New York City Tr. Auth.*, 209 AD3d 825, 827 [2d Dept 2022]; *Alexander v New York City Tr. Auth.*, 200 AD3d 509 [1st Dept 2021]).

In opposing the Transit Defendants motion, plaintiff argues that it would be premature to dismiss them from this action as discovery remains incomplete (plaintiff's affirmation in opposition to Motion Seq. No. 002 [102] ¶ 22). Plaintiff asserts that the City's document production in this action "references the Transit Defendants **169 times in its records**, including on work permits at or near the subject defective condition" and that further discovery, including a deposition by a witness for the Transit Defendants, is needed to determine "who is responsible for the creation of said defective condition that caused Plaintiff to fall" (*id*. ¶ 25, citing exhibit J in plaintiff's opposition to Motion Seq. No. 002 [NYSCEF Doc. No. 113], document discovery from the City). However, given that the Transit Defendants have established their prima facie entitlement to summary judgment, plaintiff's mere hope that additional discovery may lead to sufficient evidence that the Transit Defendants installed bike racks is insufficient to warrant denial of the Transit Defendants' motion (*Singh v New York City Hous. Auth.*, 177 AD3d 475, 476 [1st Dept 2019]).

Therefore, the Transit Defendants' motion for summary judgment is granted.

Because the Transit Defendants can no longer be held liable to plaintiff, the City's cross-claims that sound in common-law indemnification and contribution are dismissed by operation of law (*see e.g. Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the dismissal of the complaint in its entirety as against a defendant, the cross-claims against that defendant are also dismissed]).

Likewise, the Transit Defendants' own cross-claims for common-law indemnification and contribution against the other co-defendants are dismissed as academic (*Rogers v Rockefeller Group Intl.., Inc.*, 38 AD3d 747, 750 [2d Dept 2007]).

Because there are no remaining claims or cross-claims against the Transit Defendants, this personal injury action is transferred to a City Part, as the City is represented by Corporation Counsel.

CONCLUSION

Accordingly, it is hereby **ORDERED** that the motion for summary judgment by defendant City of New York (Seq. No. 001) is **DENIED**; and it is further

ORDERED that the motion to dismiss, pursuant to CPLR 3211 (a) (1) and (7), and/or for summary judgment defendants New York City Transit Authority, Metropolitan Transportation Authority and Metropolitan Transportation Authority Bus Company (collectively, the Transit Defendants) (Seq. No. 002) is **GRANTED TO THE EXTENT** that the Transit Defendants are granted summary judgment, and the complaint is severed and dismissed as against the Transit Defendants, and all cross-

claims by and against Transit Defendants are dismissed, and the branch of the motion to dismiss, pursuant to CPLR 3211 (a) (1) and (7), is denied; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendants Transit Defendants accordingly; and it is further

ORDERED that the remainder of this action shall continue; and it is further

ORDERED that this action is respectfully referred to the General Clerk's Office for reassignment to another Justice in a non-Transit, City Part; and it is further

ORDERED that the preliminary conference scheduled in the Transit Part (IAS Part 21) for April 9, 2026 at 2:15 PM is canceled.

ENTER:

20260127124343RTSAIAA37E570CD734083A2BD81017C3D2612

1/27/2026
DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**		
Seq. No. 001		**GRANTED**	**X**	**DENIED**		**GRANTED IN PART**		**OTHER**
Seq. No. 002		**GRANTED**		**DENIED**	**X**	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	**X**	**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**