Todorovic v Roosevelt Is. Operating Corp.
2026 NY Slip Op 30349(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 160162/2021
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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BIANA TODOROVIC,

Plaintiff,

- v -

ROOSEVELT ISLAND OPERATING CORP., RIVERCROSS TENANTS' CORP.,

Defendant.

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INDEX NO. 160162/2021

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion for SUMMARY JUDGMENT.

Plaintiff Biana Todorovic ("Plaintiff") moves, pursuant to CPLR § 3212(b), for summary judgment on liability against defendants Roosevelt Island Operating Corp. ("RIOC") and Rivercross Tenants' Corp. ("Rivercross"). She contends that both defendants "jointly control" the sidewalk where she fell and breached their statutory duty to maintain it in a safe condition under New York City ("NYC") Admin Code §§ 7-210 and 19-152. Defendants oppose the motion.

BACKGROUND AND PROCEDURAL HISTORY

On June 18, 2021, plaintiff alleges that she was walking in an area on Roosevelt Island between 531 and 543 Main Street when her foot caught in an irregular hole in the concrete sidewalk, causing her to fall. The hole measured about 9 inches by 8 inches with a vertical drop of 1⅜ inches. Plaintiff asserts that she tumbled, sustaining two fractures of the right fifth metatarsal and other injuries. Thereafter, she purportedly received medical treatment and incurred ongoing foot pain.

The location of the defect is described as the "concrete trim" between the brick-paver sidewalk and the adjacent Chapel Plaza near Sacred Heart Church at 543 Main Street. Plaintiff asserts the condition was visible and "took time to develop," citing Google Street View images from November 2019 and November 2020 that show the unremedied hole roughly a year and a half before her accident. Her expert engineer, Herman Silverberg, personally inspected the site seven months after the incident and confirmed the hole's dimensions (9×8×1⅜″) and long-standing nature.

Plaintiff has sued RIOC and Rivercross, alleging negligence under the City's sidewalk law. RIOC is a public corporation managing Roosevelt Island facilities; Rivercross is the cooperative corporation owning the building at 531 Main Street. Plaintiff claims both defendants had a duty to inspect and repair the sidewalk where she fell, and in fact "jointly control" that area.[1] Rivercross separately answered, denying any duty with respect to that stretch of sidewalk. In January 2024, plaintiff also brought a second action against Rivercross alone (Index No. 155941/2024) for the same incident, and by order dated October 21, 2024, the two actions were consolidated under the current index number.[2]

In support of her motion, plaintiff submitted evidence including her verified bill of particulars and expert affidavit. RIOC and Rivercross each filed opposition papers. Rivercross also submitted a sworn affidavit (of its Board president Mahesh Tandon) stating that the defective location was not in front of Rivercross's 531 Main Street building but in front of the neighboring Chapel Plaza (allegedly under RIOC's purview), and that Rivercross never owned, maintained or controlled that area. RIOC's opposition chiefly argues that RIOC does not own the subject area, and that plaintiff's evidence is speculative and fails to show RIOC created the defect or had notice of it. Plaintiff filed a reply reiterating her claims under §§ 7-210 and 19-152 and pointing to deposition testimony by RIOC's facilities director, Mehdi Omrani ("Omrani") that RIOC was responsible for the area and that its crew eventually repaired the defect.

ARGUMENTS

Plaintiff contends that she has made a prima facie case of statutory liability. Under NYC Admin Code § 7-210(b), owners of property abutting a sidewalk are "liable for any injury … caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition", and § 19-152(a)(4) specifically requires owners to repair any sidewalk trip hazard where the vertical grade differential is greater than ½ an inch. Plaintiff's evidence (photographs, Google Street View, and engineer's affidavit) shows a 1⅜″ hole that existed for over a year before her fall. She argues this condition plainly meets the statutory definition of a "substantial defect" and "tripping hazard." Depositions of RIOC's facilities manager, Omrani, confirm that RIOC controlled and routinely inspected the sidewalk (his "area of inspection" includes sidewalks) and that RIOC's crew ultimately repaired the defect. In plaintiff's view, RIOC cannot delegate away its non-delegable duty to maintain the sidewalk. Plaintiff thus requests summary judgment finding both defendants negligent *per se* as a matter of law, citing cases such as *Xiang Fu He v. Troon Mgt., Inc.*, 34 NY3d 167, 173-74 (2019), *Tropper v Henry St. Settlement* 190 AD3d 623 (1st Dept 2021), and *Lopez v 1675 Realty, LLC*, 209 AD3d 407 (1st Dept 2022).

RIOC opposes the motion, asserting that plaintiff has not eliminated triable issues. RIOC challenges the credibility and sufficiency of the evidence: it notes that plaintiff's engineer did not photograph the exact hole he measured, raising a question whether he examined the actual defect. RIOC argues the evidence does not conclusively show the defect's dimensions or that it caused the accident. RIOC further contends there is no proof it "created or had notice" of the condition –

[1] Although plaintiff also notes that "ownership of the subject injury location remains unclear."

[2] The action previously pending at Index No. 155941/2024 was consolidated into this proceeding by order dated October 21, 2024.

plaintiff herself admitted she never saw the defect despite walking the area many times. Absent proof of actual or constructive notice to RIOC, it asserts triable issues remain. RIOC's papers also point out that plaintiff cited no evidence that RIOC owned the abutting property (it is a public authority, not a private owner) or that RIOC's lease obligations extended to public sidewalks.[3] In sum, RIOC maintains the motion should be denied because plaintiff's prima facie case is not established and factual disputes (especially concerning notice and causation) exist.

Rivercross likewise urges denial of summary judgment. It emphasizes that plaintiff's moving papers focused entirely on RIOC and contain "no allegations against Rivercross." Rivercross points to its affidavit, which unequivocally states that Rivercross never owned or maintained the Chapel Plaza sidewalk where the accident occurred.[4] It argues that an owner cannot be liable for a sidewalk that does not abut its property. Rivercross further notes that plaintiff adduces no evidence (e.g. no inspection reports, work orders or admissions) showing that Rivercross ever had control of that part of the sidewalk. Because plaintiff has not shown any duty owed by Rivercross, Rivercross asserts the burden was not met and summary judgment as to Rivercross must be denied. Even if plaintiff has a prima facie case, Rivercross argues it is "free from negligence as a matter of law" since it had no role in the condition.

DISCUSSION

A motion for summary judgment "shall be granted if, upon all the papers and proofs 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" (CPLR § 3212[b]). "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]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). Upon proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010][internal quotation marks and citation omitted]).

NYC Admin Code § 7-210(a) imposes a duty on owners of real property abutting a sidewalk to maintain the sidewalk in a reasonably safe condition. Section 7-210(b) renders such owners liable for personal injuries proximately caused by their failure to do so. NYC Admin Code § 19-152(a)(4) further defines a substantial sidewalk defect as a vertical grade differential of one-half inch or more. The Court of Appeals has held that the duty imposed by § 7-210 is nondelegable

[3] RIOC contends that plaintiff has not demonstrated that RIOC owned or abutted the precise location of the alleged defect, and that evidence of post-accident repairs does not establish statutory ownership or duty.

[4] Rivercross relies on the affidavit of its Board President, which states that the alleged defect was located adjacent to Chapel Plaza, not Rivercross's property at 531 Main Street.

(*Xiang Fu He*, 34 NY3d at 173–174), but the statute nevertheless limits liability to abutting property owners or parties who have entirely displaced the owner's duty (*Chiu Shing Tsang v Ng*, 235 AD3d 460, 461 [1st Dept 2022]).

At the outset, the court finds that plaintiff has failed to establish a prima facie entitlement to summary judgment against either defendant because she has not eliminated material issues of fact regarding the threshold question of duty. Plaintiff's own affirmation expressly states that "ownership of the subject injury location remains unclear." That concession is fundamentally inconsistent with the burden borne by a summary judgment movant, particularly in a statutory sidewalk case where liability is expressly predicated on abutting ownership (*Montalbano v 136 W. 80 St. CP*, 84 AD3d 600, 602 [1st Dept 2011]).

With respect to RIOC, plaintiff relies primarily on evidence of post-accident repairs and deposition testimony indicating that RIOC's maintenance responsibilities include sidewalks. However, evidence of repair or control, standing alone, is insufficient to establish liability under § 7-210 absent proof that the defendant owned the property abutting the sidewalk where the accident occurred (*Chiu Shing Tsang*, 235 AD3d at 461; *Montalbano*, 84 AD3d at 602). Plaintiff has submitted no deed, survey, or other documentary evidence conclusively establishing that the alleged defect abutted property owned by RIOC. Accordingly, plaintiff has not met her prima facie burden as to RIOC.

As to Rivercross, plaintiff's showing is even more deficient. Rivercross submits unrebutted evidence that the alleged defect was not adjacent to its property and that Rivercross neither owned nor maintained the area in question.[5] Plaintiff offers no evidence to contradict that showing. Absent proof of abutting ownership or contractual assumption of the statutory duty, Rivercross cannot be held liable under NYC Admin Code § 7-210 as a matter of law (*Montalbano*, 84 AD3d at 602; *Alfani v Rivercross Tenants Corp.*, 230 AD3d 1022 [1st Dept 2024]).[6]

Even assuming, *arguendo*, that plaintiff had established a prima facie case, the record reveals multiple triable issues of fact that independently preclude summary judgment at this juncture. These include, but are not limited to: (1) the precise location of the alleged defect and whether it abutted property owned by RIOC or Rivercross; (2) whether RIOC's post-accident repairs were performed at the exact location of plaintiff's fall or at a nearby area; (3) whether plaintiff's expert measured and inspected the precise defect that allegedly caused the accident; and (4) whether the defect existed for a sufficient length of time to impute constructive notice, particularly in light of plaintiff's testimony that she traversed the area frequently without observing the condition.

[5] Indeed, Rivercross's own property records (ACRIS) establish that Rivercross's ownership is limited to 531 Main, not the Chapel Plaza.

[6] There is no evidence in the record that any sidewalk abutting Rivercross's property contributed to the alleged hazardous condition. To the contrary, the uncontroverted affidavit of Rivercross's Board President indicates that the defect was located entirely outside Rivercross's premises, a showing that—on the present record—would independently support Rivercross's entitlement to summary judgment.

Issues of credibility, the weight to be accorded competing evidence, and the resolution of factual disputes are matters for the trier of fact and may not be resolved on a motion for summary judgment (*Hutchinson v Sheridan Hill House Corp*., 26 NY3d 66, 77–78 [2015]).

For all of the foregoing reasons, plaintiff's motion for summary judgment on liability is denied in its entirety as against both RIOC and Rivercross. Plaintiff has failed to proffer prima facie evidence that either RIOC or Rivercross had ownership of the area where the alleged defect was located. As such, plaintiff has failed to show that either defendant had a nondelegable duty as an owner of any non–owner-occupied real property abutting a public sidewalk "to keep the sidewalk in a reasonably safe condition." As such, liability cannot attach pursuant to NYC Admin Code § 7-210 and § 19-152. New York law makes plain that the mere exercise of control over, or performance of repairs and maintenance to, a sidewalk is insufficient—standing alone—to impose liability under the City's sidewalk law in the absence of abutting ownership or a complete displacement of the owner's statutory duty, neither of which has been established here (*Montalbano*, 84 AD3d at 602; *Chiu Shing Tsang*, 235 AD3d at 461; see also *Xiang Fu He*, 34 NY3d at 173–174 [statutory duty under Admin Code § 7-210 limited to abutting owners and nondelegable]).

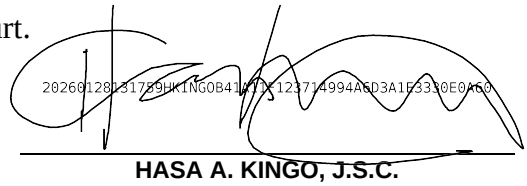
Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on liability is denied in its entirety as against both Roosevelt Island Operating Corp. and Rivercross Tenants' Corp; and it is further

ORDERED that the denial is without prejudice to renewal upon completion of discovery and the submission of a full and clarified evidentiary record establishing duty, notice, and causation; and it is further

ORDERED that the parties shall appear for a settlement conference before the court in Part 65, Room 308, at the courthouse located at 80 Centre Street, New York, New York 10013, on Wednesday, March 11, 2026, at 9:30 a.m.

This constitutes the decision and order of the court.



1/28/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
		GRANTED	**X** **DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**