Jones v City of New York
2026 NY Slip Op 30379(U)
January 29, 2026
Supreme Court, New York County
Docket Number: Index No. 158882/2017
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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EVELYN JONES,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY HOUSING AUTHORITY, S&N BUILDERS, INC.,TDX CONSTRUCTION CORPORATION, JOHN DOE

Defendant.

----------X

INDEX NO. 158882/2017

MOTION DATE N/A

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111

were read on this motion for SUMMARY JUDGMENT.

Defendants New York City Housing Authority ("NYCHA"), S&N Builders, Inc. ("S&N"), TDX Construction Corp. ("TDX"), and Raja Shahid Karamat ("Karamat" identified as "John Doe") (collectively "defendants") have moved for summary judgment pursuant to CPLR § 3212, seeking dismissal of the entire complaint on liability. They contend that none of them owed plaintiff Evelyn Jones ("plaintiff") a duty of care under the circumstances, and that the accident could not have occurred as plaintiff alleges. In particular, defendants argue that testimonial and photographic evidence conclusively show it was physically impossible for the construction-site gate to swing outward onto the public sidewalk where plaintiff was walking, because of fixed scaffold poles and crossbars. Accordingly, they assert plaintiff's version of events is "incredible as a matter of law" and that proximate cause is lacking. Defendants thus request an order granting judgment as a matter of law dismissing all claims against them. In opposition, plaintiff contends that defendants have not satisfied their threshold burden to eliminate all genuine issues of material fact, which, in plaintiff's view, lie squarely within the fact-finding role of a jury.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from an incident on April 7, 2017, at the Smith Houses (15 St. James Place, New York, NY), a NYCHA housing project. Plaintiff, a resident of the project, alleges that while walking her dog on a sidewalk adjacent to a construction area at the rear of the building, she was struck by a chain-link gate. Specifically, plaintiff claims that a construction worker (either S&N or NYCHA staff) swung open the gate out onto the sidewalk and it came into contact with plaintiff, causing her to fall. As a result, plaintiff asserts she suffered personal injuries. The City of New York was originally named but has since been dismissed. The remaining defendants are NYCHA (the property owner), S&N (general contractor), TDX (another contractor with a separate safety contract), and their on-site supervisor Raja Shahid Karamat (formerly "John Doe").

All parties conducted discovery. Plaintiff gave testimony in a 50-h hearing on September 1, 2017, and at deposition detailed the circumstances of the accident. In summary, plaintiff testified she exited her building's rear, walked down a cement incline with her dog on a leash, and proceeded on the sidewalk under a scaffold. She recalled a scaffold overhead and support poles on either side of the path. As she approached a wall and fence, she saw a man standing in an open accessway adjacent to the chain-link fence. The man had his back to her and was pulling open a gate attached at that access. Plaintiff testified she heard metal scraping on the sidewalk, then saw the gate swung toward the sidewalk. She put her hand out in front of her, and the gate struck her, causing her to fall. During her deposition and at the hearing, plaintiff denied that any scaffold crossbars or poles blocked the gate. In fact, she stated that any horizontal crossbar shown in a post-accident photograph was not present on the day of the accident.[1]

Defendants moved for summary judgment on August 28, 2025. In support they submitted, among other things, plaintiff's deposition transcripts and photographs of the site taken after the accident. Defendants argue these establish as a matter of law that the gate could not have opened outward onto the sidewalk given fixed scaffold posts and a diagonal crossbar, and thus the incident could not have happened as plaintiff claims. Defendants also argue that NYCHA and S&N owed no duty to protect plaintiff on the sidewalk and that TDX was not at the scene and had no responsibility for site safety that day. Plaintiff opposed, arguing that her eyewitness testimony and even defendants' own witnesses create triable issues of fact as to what happened. Plaintiff notes that both Karamat and another S&N employee (Norman Raja) testified that the gate was removed (cut open) to free plaintiff, and that no crossbars blocked the opening at the time. According to plaintiff, those facts support her version that the gate did swing outward onto the sidewalk and hit her, raising factual issues.

ARGUMENTS

Defendants contend first that none of them owed plaintiff a duty. They emphasize that plaintiff was on a public sidewalk, not on the construction site, when the gate hit her. As such, they claim NYCHA (the owner) and S&N (the contractor) had no legal obligation to prevent harm to passersby caused by the normal opening of a gate. In support, defendants cite the well-settled negligence standard that liability exists only if the defendant owed a specific, legal duty to the injured plaintiff at the time of harm. They argue that here the accident was not foreseeable to a reasonable person, and the hazard (a gate) was open and obvious. For similar reasons, they assert that TDX had no duty (being a different subcontractor with no presence on site that morning).

Defendants further argue they have carried their initial burden on summary judgment by producing evidence negating causation. They point to the photographic and deposition evidence showing scaffold poles that, they say, prevented the gate from swinging out. For example, defendants highlight testimony of Karamat that the gate could not move without more than one person, and that when he entered the site to help plaintiff, he had to go under the scaffolding bar. The post-accident photographs (Defendants' Ex. C) show a diagonal crossbar and vertical poles inside the fence. Defendants assert that even if plaintiff claimed the bar was absent, the remaining

[1] Plaintiff's testimony further established that TDX personnel were not on site that morning and that she saw no other defendants in proximity.

vertical pole would still have blocked the door. In short, defendants contend the admissible evidence makes it "physically impossible" for the gate to have been opened out toward plaintiff, so the court must reject plaintiff's account as incredible. Defendants invoke authority that "courts need not shut [their] eyes to patent falsity," and they argue this is such an extraordinary case where credibility is for the court, not a jury (*MRI Broadway Rental v United States Min. Prods. Co.*, 242 AD2d 440, 443 [1st Dept 1997], *affd* 92 NY2d 421 [1998]; *see also Carthen v. Sherman*, 169 AD3d 416 [1st Dept 2019]).

Plaintiff counters that defendants have failed to eliminate triable issues. She emphasizes that she gave consistent testimony that the gate was opened toward the sidewalk and struck her. Plaintiff argues that foreseeable harm arises whenever a gate is swung outward onto a pedestrian way, and as a pedestrian, she was entitled to the same protection as any person coming upon the premises under *Di Ponzio v. Riordan*, 89 NY2d 578, 582 (1997). Plaintiff notes that even defendants' argument that the gate was stationary or immovable is contradicted by their own witnesses. For instance, foreman Karamat testified he and co-workers "had to cut open the gate" to reach plaintiff, and that after cutting it loose they did push the gate outward off the hinges. Another S&N employee, Norman Raja, conceded he saw no diagonal crossbar blocking the gate opening on the day of the accident. Plaintiff observes that these admissions directly support her version: the gate could swing freely once removed. Plaintiff insists that all inferences must be drawn in her favor; by ignoring her testimony, defendants simply try to "pretend" she did not testify as she did. Citing summary-judgment law, plaintiff argues that any conflict – for example between her testimony and the photographs – raises a triable issue for the jury. In sum, plaintiff urges that summary judgment must be denied because defendants' own evidence bolsters her claim, and the apparent contradictions are classic credibility issues for trial.

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]). Likewise, the evidence must be viewed in the light most favorable to the plaintiff, resolving all ambiguities and drawing all reasonable inferences against the movant (*e.g. Jacobsen v. New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014][Expressly stating that "facts must be viewed in the light most favorable to the non-moving party"]). In substance, if there is any doubt whether triable issues exist, or if

different inferences can be drawn, the motion should be denied so that a jury can determine the facts.

To maintain a cause of action in negligence, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Pasternack v Lab's Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). "The question of whether a defendant owes a legally recognized duty of care to a plaintiff is the threshold question in any negligence action" (*On v BKO Exp. LLC*, 148 AD3d 50, 53 [1st Dept 2017]). "In the absence of a duty, as a matter of law, there can be no liability" (*Pasternack*, 27 NY3d at 825). Under New York law, "it is well settled that landowners and business proprietors have a duty to exercise reasonable care in maintaining their properties in a reasonably safe condition" (*Di Ponzio*, 89 NY2d at 582). Likewise, a contractor performing work on behalf of an owner also has a duty to exercise reasonable care so as not to create hazardous conditions in the performance of its work (*Espinal v. Melville Snow Contrs.*, 98 NY2d 136, 140 [2002]; *Santos v. Deanco Servs., Inc*., 142 AD3d 137, 142 [2d Dept. 2016]). Whether a duty is owed is initially a question of law (*Di Ponzio*, 89 NY2d at 582-83).

Defendants argue that they owed no duty because plaintiff was on a sidewalk outside the gated work area. However, even if the sidewalk is public, a landowner is generally expected to anticipate that trespassers and visitors may approach the property's entrances (*see Di Ponzio*, 89 NY2d at 582). Here, the evidence suggests plaintiff was leaving her own NYCHA building and walking along an accessway bordering the project. To the extent the gate served as an access door to the site, plaintiff was coming upon the premises, and defendants thus owed at least a duty to avoid harming her. Indeed, plaintiff's opposition correctly points out that anyone who opens a gate onto a pedestrian walkway "would certainly owe a duty to any pedestrian on the sidewalk to not strike them with the gate." That conclusion is consistent with common-sense foreseeability. As plaintiff argues, it was foreseeable that swinging a heavy construction gate outwards onto a pathway without checking behind could injure an unsuspecting passerby. Under these circumstances, the court finds that questions of duty are best resolved by the jury given the proximity of the gate to the sidewalk and the nature of the activity. Defendants have not established as a matter of law that no duty was owed to plaintiff.

Given a duty of care, the next question is whether defendants breached it by their conduct. Defendants assert that they did nothing wrong – the gate could not physically strike plaintiff – and thus no breach occurred. This argument effectively asks the court to credit the photographic evidence of scaffold supports over plaintiff's contrary testimony. In weighing breach, however, it is not the role of the court on a summary judgment motion to decide factual issues by evaluating competing evidence (*Mercafe Clearing. v. Chemical Bank*, 216 AD2d 231, 234 [1st Dept 1995]). Summary judgment is generally inappropriate when there is a dispute whether defendant acted reasonably or whether an accident was unavoidable in light of all the surrounding circumstances (see *Ortiz v. Knighton*, 14 AD2d 679, 680 [1st Dept 1961]). Here plaintiff's evidence – principally her own eyewitness testimony – indicates that an S&N worker, acting under Karamat's supervision, did swing the gate outward and that it did in fact contact her hand and knock her over. Defendants present no contrary eyewitness; they rely on post-accident photographs and their employees' later statements. S&N's own foreman Karamat admitted he had to cut the gate free to help plaintiff and that thereafter "they indeed pushed the gate outwards." Norman Raja likewise

confirmed that no horizontal crossbar was present at the accident location, meaning nothing blocked the gate at that moment. A reasonable trier of fact could find from this testimony that the gate swung out onto the sidewalk just as plaintiff said. The jury could credit plaintiff over defendants' later reconstruction of the site. In short, defendants have not foreclosed all inferences of breach; rather, the evidence allows the inference that someone (Karamat's crew) did operate the gate toward plaintiff, possibly carelessly.

Defendants frame the motion as showing that plaintiff's account is physically impossible. Such an argument essentially attacks plaintiff's credibility and suggests that plaintiff has fabricated her claim. It is true that, in rare circumstances, a court may reject an implausible story and grant summary judgment. As the Appellate Division, First Department, held in *Carthen v. Sherman*, 169 AD3d 416 (1st Dept 2019), where a plaintiff's testimony was "internally contradictory" and flatly contradicted by uncontroverted evidence (damaged areas on photographs and a police report), the testimony was "demonstrably false and incredible as a matter of law," permitting judgment for the defense. Indeed, the court there emphasized that we are not required to "shut [our] eyes to the patent falsity of a claim." However, *Carthen* and similar cases (e.g. *Finley v. Erie & Niagara Ins. Assn.*, 162 AD3d 1644, 1646-47 [4th Dept 2018]) represent the exception, not the rule. The general rule is that credibility disputes and conflicting inferences must be resolved by the fact-finder (*Loughlin v. City of New York*, 186 AD2d 176, 177 [2d Dept 1992]). As the *Carthen* court itself cautioned, credibility may be decided on summary judgment only in the "rare instance" of incontrovertible falsity (169 AD3d at 417).

Here, despite defendants' insistence that scaffolding made the accident impossible, the evidence does not establish such patent falsity. Defendants rely on photographs taken *after* the accident, showing various horizontal and diagonal bars on the fence and posts under the scaffold. But plaintiff testified that at the time of the accident those bars were not in place at that particular opening. That issue – whether the photos accurately reflect the accident scene – is itself disputed. Moreover, even conceding a diagonal bar was present, plaintiff's evidence (and the witnesses') suggests it was removed (or never there) when the gate was swung. The scaffolding poles, if anything, support plaintiff's theory: witnesses said the gate was typically taken down daily and only reattached at day's end (implying it could be swung freely when lowered). Karamat's admission that "moving the gate required more than one person" and that he actually exited under a bar to reach plaintiff undercuts the notion that the gate was jammed against hardware. In short, there is room to believe plaintiff's version (gate out) just as there is room to believe defendants' theory (gate in). This credibility dispute cannot be resolved summarily unless one version is inherently impossible, which it is not.

Defendants have pointed to no single fact that unmistakably disproves plaintiff's story. By contrast, plaintiff has non-speculative evidence (her testimony, and the testimony of Karamat and Raja) that someone did open and push the gate outward. Even if the scaffold bars were as defendants now claim, the trier of fact could conclude they were absent or moved at the critical moment. Under New York law, such questions usually present a question for resolution by the trier of fact (*Tagle v. Jakob*, 97 NY2d 165, 169 [2001]). And evidence that defendants initially had to dismantle the gate to assist plaintiff – including cutting it off – tends to show the gate was mobile and *could* swing out.

Because defendants rely entirely on contestable evidence and assertions about what is "physically impossible," rather than undisputed proof, they have not met their prima facie burden to negate causation. The facts here differ markedly from the record in *Carthen*, where every shred of physical evidence contradicted plaintiff's testimony in isolation. Here, the "physical impossibility" argument depends on assumed facts (the existence of crossbars) that the fact-finder might find unproven or irrelevant. Given that plaintiff's narrative is supported by specific testimony and the context in which the gate was handled, the court finds that reasonable jurors could disagree on what occurred.

In addition, defendants assert that even if duty and breach were shown, plaintiff was somehow not entitled to recover because she was not in the "vicinity" of defendants' work. But this too is a proximate-cause argument. Defendants cite no case barring recovery when an owner "launches a force" that hits someone off the premises (indeed, New York law imposes liability for dangerous instruments ejected into public areas). Nor is there any indication plaintiff did anything to contribute to her fall. Defendants have not demonstrated they were free of fault.

Construing all inferences in the light most favorable to plaintiff, the moving defendants have not established the absence of any material factual issue. There are triable questions whether the gate was swung out onto the sidewalk and whether defendants acted negligently in doing so. Plaintiff has pointed to her own eyewitness account and to corroborating testimony from defendants' employees that raise conflicting versions of the event. Under *Winegrad v. NYU Med. Ctr.*, 64 NY2d 851, 853-54 (1985) and its progeny, summary judgment is inappropriate when, as here, different inferences may be reasonably drawn from the evidence. Accordingly, defendants' motion for summary judgment is denied in all respects. It is hereby

ORDERED that the motion of defendants NYCHA, S&N Builders, TDX Construction, and Raja Shahid Karamat for summary judgment is denied; and it is further

ORDERED that the complaint remains to be tried on the issues of negligence and causation as alleged; and it is further

ORDERED that the parties are directed to appear in-person for a settlement conference before the court on Wednesday, March 11, 2026 at 10:00 AM in Part 65, Room 308, of the courthouse located at 80 Centre Street, New York, New York, 10013.

This constitutes the decision and order of the court.

1/29/2026
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**