

Zoida v City of New York
2026 NY Slip Op 30516(U)
February 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 509841/2016
Judge: Lisa S. Ottley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

-----X
PROVIDENZA ZOIDA,

Index # 509841/2016

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendants.
-----X

PROVIDENZA ZOIDA,

Index # 505032/2018

Plaintiff,

Decision and Order

-against-

Motion Seq. # 2

KEYSPAN CORPORATION, KEYSPAN ENERGY
DELIVERY N.Y.C., NATIONAL GRID, and THE
BROOKLYN UNION GAS COMPANY D/B/A
NATIONAL GIRD NY,

Defendants.
-----X

KEYSPAN CORPORATION, KEYSPAN ENERGY
DELIVERY N.Y.C., NATIONAL GRID, and THE
BROOKLYN UNION GAS COMPANY D/B/A
NATIONAL GIRD NY,

Third-party Plaintiff,

-against-

THE HALLEN CONSTRUCTION CO.,

Third-party Defendant.
-----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-H]
Affirmation/Affidavit in Opposition.....	3 [Exh. A-E], 4 [Exh. A]
Reply Affirmations.....	5

Plaintiff, Providenza Zoida, commenced this action against defendants, Keyspan Corporation, Keyspan Energy Delivery N.Y.C., National Grid, and The Brooklyn Union Gas Company d/b/a National Grid NY (hereinafter, “National Grid”) due to a trip and fall as a result of a depressed, holey, and/or uneven condition on a roadway, which occurred on 70th Street between 17th and 18th Avenues, in Brooklyn, New York, on or about March 13, 2015. Plaintiff alleges that she tripped and fell on a broken portion of asphalt in the middle of the roadway when crossing the roadway. Plaintiff also commenced an action against the City of New York under Index No. 509841/2016. The matters have been consolidated for joint trial by the order of the Hon. Reginald A. Boddie, J.S.C., dated August 1, 2019. The Third-Party action against The Hallen Construction Co. has been discontinued pursuant to a Stipulation of Discontinuance, dated March 22, 2024.

National Grid moves pursuant to CPLR § 3212 for an order granting summary judgment dismissing plaintiff’s complaint and all crossclaims, on the grounds that they did not conduct work at the alleged accident site and did not create the alleged defective condition. Plaintiff opposes National Grid’s motion on the grounds that National Grid has failed to make a *prima facie* showing entitling them to summary judgment by failing to demonstrate that it did not create the uneven condition and there remains questions of fact regarding National Grid’s liability.

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 also, 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].

According to National Grid, it did not own, lease, or have a duty to maintain and repair the alleged location. National Grid argues that it did not create the alleged hazardous condition because it did not perform any work at the specific location of the plaintiff’s alleged trip and fall accident. In support, National Grid has offered the deposition testimony of its Consultant, Walter Stone,

who testified that the work was performed in the vicinity of the curb pursuant to New York City Street Opening Permits, a job control report, and paving orders, which did not involve the middle roadway where the plaintiff fell. According to Mr. Stone, the gas line and all work was measured 3 to 4 feet from the curb on one side of the street; the dark area at the bottom of the roadway looked like a restored trench; and the condition in the middle of the roadway looked like wear and tear. In further support, National Grid has offered the paving order, which specified that the opening for 1776 70th Street was 6 feet by 5 feet and was located 5 feet east of the west curb of 70th Street and 130 feet north of the north curb of 18th Avenue; the work was on the even side of the roadway; and the paving was completed on July 15, 2014. Lastly, National Grid has provided a photograph marked by the plaintiff with a circle showing where she fell and the plaintiff's deposition testimony where she testified that she was about in the middle of the street when she fell.

In opposition, the plaintiff argues that questions of fact exist as to whether the damaged asphalt was caused by National Grid's work and equipment. According to plaintiff, National Grid performed work in the roadway near where the plaintiff fell as there is evidence that National Grid excavated the roadway near the curb, replaced and installed major gas main piping, and delivered the pipes to the location via tractor-trailer with a boom. In support, plaintiff offers the deposition testimony of Hallen's Assistant Vice President of Estimating and Engineering, Paul Handley, who opined that outrigging, such as wood blocks or dunnage, would have to be used to properly stabilize the tractor-trailer and boom. Mr. Handley further opined that the tractor-trailer and boom would have to be situated parallel to the load in the roadway to deliver the pipes and the outrigging legs should be supported so the asphalt would not be damaged on hot days. In further support, the plaintiff has offered a photograph of the gas main pipes being stored adjacent to the curb and a citation that National Grid received from the City of New York Department of Environmental Protection for improper storage of the gas main pipes along the roadway. According to the violation, the area in question was to be used to store excavation/fill from the project, not for pipes. As such, the plaintiff argues that pipes were stored several feet from the location of the work as set forth in the permit and several feet from the portion of the roadway where plaintiff fell. Plaintiff further argues that the photographs in the record demonstrate that the area where plaintiff fell is mere feet from not only the work performed by National Grid but also in close proximity to where the delivery tractor-trailer would have been set in order to drop the pipes at the location for which National Grid received the violation. Plaintiff contends that National Grid utilized portions of 70th Street outside of the dimensions of the actual digging to accomplish its' task and bundles of replacement gas main pipes sat within several feet of the work area. Lastly, plaintiff argues that National Grid has failed to state when the area was last inspected before the plaintiff's accident.

In reply, National Grid argues that the constructive notice rule that evidence must be offered as to when they are was last cleaned or inspected is not applicable to a contractor who performs work on the public roadway and is not in possession and control of the roadway. National Grid further argues that plaintiff is speculating that the tractor-trailer used to deliver the pipes to the location caused the alleged hole since National Grid's work was not in the middle of the street. Also, plaintiff has not provided any evidence to suggest wood blocks or dunnage were not used to stabilize the delivered pipes and protect the asphalt from damage. National Grid further argues that a violation issued by the City for improper storage of gas main pipes is irrelevant to the claimed defect in the middle of the road. Plaintiff did not trip over a pipe placed by National Grid on the

side of the street, did not trip over an excavated area of roadway, and did not fall over any material that had been excavated and placed next to the excavation.

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).

A contractor may be held liable for an affirmative act of negligence which results in the creation of a dangerous condition upon a public street or sidewalk. See, Pizzolorusso v Metrol Mechanical, et. al., 205 A.D.3d 748, 168 N.Y.S.3d 103 (2nd Dept., 2022), citing, Sturm v Myrtle Catalpa, LLC, 149 A.D.3d 1130, 53 N.Y.S.3d 356. 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 constitute constructive notice, a condition must be visible and apparent for a sufficient length of time prior to the accident to permit the defendant's employees to discover and remedy it. See, Gordon v American Museum of National History, 67 N.Y.2d 836, 501 N.Y.S.2d 646 (1986). 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).

Here, National Grid has satisfied its burden in making a prima facie showing of its entitlement to summary judgment by submitting evidence showing that it did not owe a duty to the plaintiff as it did not own, occupy, control, or have a special use of the subject area at the time of the accident and, thus, could not be held liable for injuries caused by the allegedly dangerous conditions. See, Mitchell v Icolari, 108 A.D.3d 600, 969 N.Y.S.2d 503 (2nd Dept., 2013). Furthermore, National Grid's submission of the New York City Street Opening Permits, job control report, paving orders, photograph, and deposition testimony, make out its prima facie case that it had not caused or created the alleged defect, or negligently repaired the roadway where the injured plaintiff fell, since its work was confined to a curb area on 70th Street between 17th and 18th Avenues, whereas the plaintiff allegedly fell in the middle of said roadway. See, Arrucci v City of New York, 45 A.D.3d 617, 846 N.Y.S.2d 269 (2nd Dept., 2007); Ciavarelli v Town of Islip, 67 A.D.3d 623, 888 N.Y.S.2d 172 (2nd Dept., 2009).

In opposition, plaintiff failed to raise a triable issue of fact as she did not offer proof beyond mere speculation that National Grid, in fact, did any work at the specific location in question, or alternatively, that the nature of the work might reasonably be expected to require activity beyond the curb area and into the middle of the roadway. As such, the court finds that National Grid's repairs to gas main pipping confined to a curb area is not in reasonable proximity to the location of plaintiff's alleged accident in the middle of the roadway. See, Rosa v City of New York, et. al., 215 A.D.3d 707, 187 N.Y.S.3d 685 (2nd Dept., 2023). The court further finds that the photographs submitted by the plaintiff depict the gas main pipes being stored near the curb area, and therefore, the plaintiff has resorted to conjecture and speculation by arguing that the

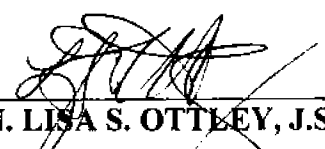
tractor-trailer/boom, gas main pipes, or lack of wood blocks/dunnage created or caused the alleged defect in the middle of the roadway. The plaintiff's argument as to constructive notice has failed since National Grid has satisfied its prima facie burden by demonstrating that it did not owe a duty to the plaintiff and did not create the alleged defect in the roadway.

Based on the foregoing, it is hereby

ORDERED, that National Grid's motion for summary judgment, pursuant to CPLR § 3212, is hereby granted in its entirety.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
February 5, 2026



HON. LISA S. OTTLEY, J.S.C.
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KINGS COUNTY CLERK
FILED
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