Torres v City of New York
2026 NY Slip Op 30553(U)
February 11, 2026
Supreme Court, New York County
Docket Number: Index No. 156048/2019
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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IRAIDA TORRES,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, AND, THE SCHOOL CONSTRUCTION AUTHORITY OF THE CITY OF NEW YORK

Defendant.

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INDEX NO. 156048/2019

MOTION DATE N/A

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 235, 236, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266

were read on this motion for SUMMARY JUDGMENT.

Defendant the School Construction Authority of the City of New York ("SCA") moves, pursuant to CPLR § 3212, for summary judgment and an order dismissing plaintiff Iraida Torres' ("plaintiff") complaint and all cross-claims asserted against it by codefendants the City of New York, the Board of Education of the City of New York, and the Department of Education of the City of New York (collectively, "the City Defendants"). SCA additionally seeks leave to submit a sur-reply in the event SCA's motion to vacate the note of issue is granted and additional discovery is exchanged.[1] For the reasons set forth below, SCA's motion is denied in its entirety.

BACKGROUND AND PROCEDURAL HISTORY

This is a personal injury action arising from plaintiff's alleged trip-and-fall on February 10, 2019, on the sidewalk abutting the premises located at 306 Fort Washington Avenue, New York, New York (the subject location). Plaintiff alleges she tripped due to a height differential/misalignment between sidewalk flags and sustained injury. SCA acknowledges that,

[1] By decision and order dated June 24, 2025, Justice Shlomo S. Hagler denied the motion to vacate the note of issue, thereby rendering this requested relief moot.

at the time of the incident, construction work at the school was ongoing under SCA's direction through its contractor (described in the papers as façade work and roof work), and that a sidewalk shed/sidewalk bridge was installed as part of that project. The record submitted on this motion reflects that plaintiff served a notice of claim and appeared for municipal examinations, that pleadings were served, and that depositions were taken, including the deposition of SCA's witness, Dinesh Nain. The City Defendants interposed cross-claims for, among other things, contribution and indemnification against SCA.

ARGUMENTS

SCA argues it is entitled to summary judgment dismissing the complaint and all cross-claims because it owed no duty to plaintiff. SCA contends it did not own, control, or lease the premises/sidewalk at issue, and did not create the alleged sidewalk defect. SCA further argues that its activities at the location were limited to the school renovation work (façade and roof work), and that while a sidewalk shed and related temporary protections were installed, SCA had no duty to repair or replace sidewalk concrete until removal of the sidewalk shed, and, on SCA's account, the sidewalk shed was still in progress/not complete as of February 10, 2019. SCA also contends it lacked notice of the alleged defect, citing testimony that inspections/walkthroughs occurred and no dangerous condition was observed. As to the City Defendants' cross-claims, SCA argues there is no contract between SCA and the City Defendants providing for contractual indemnification, and that common-law indemnification and contribution are unavailable because the City Defendants cannot demonstrate freedom from negligence.

Plaintiff opposes, arguing SCA owed a duty because SCA was an owner and/or had "management jurisdiction" over the property, and because SCA's ongoing construction project—including placement of the sidewalk shed—constituted control and/or special use of the sidewalk area. Plaintiff points to property/zoning records indicating, in substance, that management jurisdiction was assigned to SCA and that the subject lot was "presently owned" by SCA, and to testimony from SCA's witness expressing uncertainty as to whether SCA or DOE owned the premises. Plaintiff also relies on project documentation described as reflecting, within the "scope of work," removal and replacement of concrete sidewalk flags, and testimony that SCA safety personnel performed walkthroughs/inspections and could direct sidewalk repairs. Plaintiff further contends that the alleged defect existed for a sufficient period of time to charge SCA with constructive notice, offering (among other things) evidence of a prior notice of claim by another claimant for a 2017 incident at the location and an engineer's opinion that the condition was gradual and long-standing.

The City Defendants oppose, adopting plaintiff's arguments regarding SCA's management and control over the construction project and, by extension, the sidewalk area affected by the project. They further argue dismissal of their cross-claims is premature, and contend that indemnification obligations may arise in connection with the sidewalk shed permit and applicable DOB rules requiring indemnification by the permittee.

In reply, SCA reiterates that its repair obligations as to the sidewalk were not triggered until removal of the sidewalk shed, emphasizes testimony that no drilling or damage to the sidewalk was required for installation of the sidewalk shed or fencing, and contends inspections

negate notice. SCA also acknowledges that its earlier request for leave to submit a sur-reply became moot in light of the determination of the note-of-issue motion.

DISCUSSION

Summary judgment is a drastic remedy that should be granted only where the movant establishes, by admissible evidence, its prima facie entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact (*see Alvarez v Prospect Hosp*., 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such a prima facie showing requires denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr*., 64 NY2d 851, 853 [1985]). In determining a motion for summary judgment, the court does not resolve issues of credibility; rather, it determines whether triable issues of fact exist, viewing the evidence in the light most favorable to the nonmovant and drawing all reasonable inferences in that party's favor (*see Vega v Restani Constr. Corp*., 18 NY3d 499, 503 [2012]; *Sillman v Twentieth Century-Fox Film Corp*., 3 NY2d 395, 404 [1957].)

The threshold issue in negligence is duty (*see Hamilton v Beretta U.S.A. Corp*., 96 NY2d 222, 232 [2001]). Liability for a dangerous condition on property is generally predicated upon ownership, occupancy, control, or special use (*see Gibbs v Port Auth. of N.Y.*, 17 AD3d 252, 254 [1st Dept 2005]). In sidewalk cases in New York City, Administrative Code § 7-210 imposes on an "owner of real property abutting any sidewalk" a duty to maintain the sidewalk in a reasonably safe condition and provides for liability for injury proximately caused by the failure to do so (subject to the statutory residential exception) (*Fayolle v. East W. Manhattan Portfolio, L.P*., 108 AD3d 476 [1st Dept 2013]).

Against these standards, SCA has not established its prima facie entitlement to summary judgment dismissing the complaint. First, on duty, the papers submitted by SCA do not eliminate triable issues of fact as to whether SCA was, at the time of the accident, an "owner" or otherwise an entity in sufficient control of the property/sidewalk to owe a duty to plaintiff. Plaintiff identifies municipal property/zoning records filed on behalf of defendants which, on their face, describe the DOE as having "assigned management jurisdiction" to SCA pursuant to the Public Authorities Law, and which also state that the zoning lot was "presently owned" by SCA. Plaintiff further points to testimony from SCA's witness, when asked who owned the property, that he believed it was "SCA or DOE." On this record, and particularly given that SCA's own witness could not definitively exclude SCA ownership, SCA has not met its prima facie burden to establish, as a matter of law, that it owed no duty as an owner or as an entity occupying/controlling the area (s*ee Winegrad*, 64 NY2d at 851-853; *Gibbs*, 17 AD3d at 254).

Second, even assuming *arguendo* that the ultimate title owner was not SCA, SCA's own submissions and the undisputed existence of the sidewalk shed/sidewalk bridge installed for the SCA project do not eliminate a duty theory grounded in "special use." The Court of Appeals has long recognized that where permission is granted by a municipal authority to interfere with a street/sidewalk for private use and convenience, the party deriving a special benefit unrelated to the public use may be required to maintain the affected area or structure in a reasonably safe

condition, grounded in that party's access to and control over the special use installation (*see Kaufman v Silver*, 90 NY2d 204, 207-208 [1997]).

The Appellate Division, First Department, has repeatedly held that, where construction protections encroach on or narrow pedestrian passage and may direct pedestrians toward a defect, summary judgment dismissing claims on duty/causation grounds may be unwarranted because factual issues exist as to whether the encroachment constituted special use and whether it proximately caused the injury by channeling the pedestrian's path (*see McKenzie v Columbus Ctr., LLC*, 40 AD3d 312, 312-313 [1st Dept 2007]; *Hunter v City of New York*, 23 AD3d 223, 224 [1st Dept 2005]; *Coulton v City of New York*, 29 AD3d 301, 301-302 [1st Dept 2006].) Here, plaintiff alleges the fall occurred under the sidewalk shed/bridge installed for the SCA project, and plaintiff and the City Defendants contend the shed/bridge was part of SCA's exclusive construction operations at the site. Whether the shed narrowed/directed pedestrian travel in a manner that increased risk or proximately caused plaintiff to encounter the alleged sidewalk defect is, on this record, a quintessential triable issue. SCA's reliance on a "not yet triggered" repair obligation (i.e., that sidewalk replacement would occur only after shed removal) does not, as a matter of law, negate a duty to maintain a reasonably safe pedestrian pathway during the period SCA (through its project and protections) was occupying and using the sidewalk space (*see McKenzie*, 40 AD3d at 312-313; *Coulton*, 29 AD3d at 301-302).

Third, on notice, SCA has also failed to eliminate triable issues as to constructive notice. Constructive notice requires that the defect be visible and apparent and exist for a sufficient length of time prior to the accident to permit a defendant to discover and remedy it (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). Where a defendant seeks summary judgment on lack of notice in a premises-liability context, it must come forward with evidence as to when the accident area was last inspected/cleaned relative to the accident, not merely general assertions of routine practices (*see Smith v Costco Wholesale Corp.*, 50 AD3d 499, 500-501 [1st Dept 2008]; *see also Maldonado v City of New York*, 93 AD3d 407, 407-408 [1st Dept 2012] [finding defendant failed to meet its burden where inspection/cleaning occurred in the morning but the fall occurred after 7:00 p.m. amid ongoing construction]).

Here, the opposition papers highlight that SCA's witness testified generally about inspections/walkthroughs, but the motion record does not establish, with the specificity required on summary judgment, when the precise accident area was last inspected prior to the incident or what conditions were observed then. Moreover, plaintiff's opposition relies on evidence tending to show the alleged sidewalk height differential was long-standing, including a prior notice of claim and photographs from a 2017 incident and an engineering opinion that the condition developed gradually over months or years. The Appellate Division, First Department, has recognized that photographs, together with testimony that they fairly and accurately depict the condition at the time of the accident, may raise triable issues of constructive notice by permitting a factfinder to infer the condition existed long enough to have been discovered and remedied (*see Denyssenko v Plaza Realty Servs., Inc.*, 8 AD3d 207, 208 [1st Dept 2004]; *see also Tropper v Henry St. Settlement*, 190 AD3d 623, 624-625 [1st Dept 2021]). Whether the defect existed for a sufficient time and was visible and apparent—particularly in light of the claimed long duration and the asserted inspection activities—is a factual question not resolvable as a matter of law on this record.

Fourth, SCA's "creation" arguments do not warrant summary dismissal on this motion. Although SCA emphasizes testimony that installation of the shed and fencing did not require drilling into the sidewalk and contends it did not perform sidewalk repairs before the accident, the record also contains assertions that the SCA project contemplated removal and replacement of concrete sidewalk flags as part of the paved-area scope of work, and that SCA safety personnel could direct repairs depending on conditions observed. At a minimum, this record does not foreclose factual disputes concerning whether SCA's construction operations and protections altered pedestrian routing and contributed to the hazard, and whether SCA's project-related sidewalk use—regardless of who originally created the height differential—triggered a duty to maintain a safe walkway under the shed (*see McKenzie*, 40 AD3d at 312-313; *Coulton*, 29 AD3d at 301-302).

Because SCA has not met its prima facie burden on duty and notice, its request for summary judgment dismissing the complaint must be denied (*see Winegrad*, 64 NY2d at 851-853).

SCA's motion to dismiss the City Defendants' cross-claims is likewise denied. As a general matter, common-law indemnification is a doctrine rooted in vicarious liability; it permits shifting the entire loss to the party that actually caused the injury where the indemnitee is held liable solely by operation of law (*see McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 375-378 [2011]). On this record—where material issues remain as to SCA's duty, control, special use, notice, and potential negligence—dismissal of cross-claims for contribution and common-law indemnification is premature (*see id.*; *see also York v Tappan Zee Constructors, LLC*, 224 AD3d 527 [1st Dept 2024] [denying contractual indemnification relief as premature where issues of fact remained as to notice and ability to remedy conditions]).

As to contractual indemnification, SCA argues that no contract exists between it and the City Defendants requiring indemnification; the City Defendants respond that the sidewalk shed permit framework itself requires indemnification by the permittee and cite 1 RCNY § 101-08 (j). That rule expressly provides that the "permittee shall indemnify, defend and hold the city and its officials and employees harmless" for claims arising out of or related to permitted operations. (1 RCNY § 101-08 [j].) It also defines "permit" to include permits for installation of sidewalk sheds and scaffolds (1 RCNY § 101-08 [a] [3]).

The motion record does not definitively establish, as a matter of law, whether SCA (or an entity for whom SCA bears responsibility) was the relevant "permittee," what the precise permit terms and project contracting structure were for the sidewalk shed at issue, or whether such regulatory indemnification provisions apply to the specific cross-claims asserted and the facts claimed. In any event, given that unresolved factual and legal issues remain concerning SCA's role and potential negligence, summary dismissal of cross-claims for contractual indemnification is not warranted on this record.

Accordingly, triable issues of fact remain, including, but not limited to: (i) whether SCA was an "owner" of the abutting property within the meaning of Administrative Code § 7-210, or otherwise exercised sufficient control/management of the subject location to owe a duty to plaintiff; (ii) whether the sidewalk shed/bridge constituted a special use by SCA and whether the

shed's placement narrowed or diverted pedestrian travel toward the alleged defect; (iii) whether SCA breached any duty to maintain a reasonably safe pedestrian walkway under the shed during the project, irrespective of whether SCA originally created the sidewalk height differential; (iv) whether SCA had actual or constructive notice of the condition, including when the area was last inspected prior to the accident, what was observed, and what repair authority existed at that time; and (v) whether any indemnification obligations (contractual, regulatory, or common-law) are triggered, and, if so, the extent of such obligations.

Accordingly, it is hereby

ORDERED that SCA's motion for summary judgment pursuant to CPLR § 3212 dismissing plaintiff's complaint is denied; and it is further

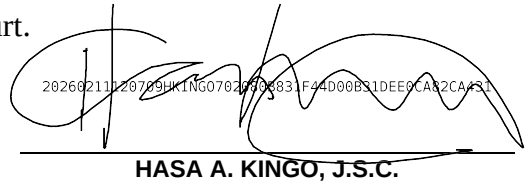
ORDERED that SCA's motion for summary judgment dismissing all cross-claims asserted against it is denied; and it is further

ORDERED that SCA's alternative request for leave to submit a sur-reply is denied as moot; and it is further

ORDERED that the parties shall appear for an in-person settlement conference on Wednesday, March 11, 2026, at 12:00 p.m., in Room 308 of the courthouse located at 80 Centre Street, New York, New York; and it is further

ORDERED that, in advance of the conference, appearing counsel shall exchange a settlement demand and any preliminary offers, shall appear with full settlement authority, and shall ensure that their clients are present in-person or immediately available by telephone for the duration of the conference.

This constitutes the decision and order of the court.



2/11/2026
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**