

Kim v Hudson 888 Owner, LLC
2026 NY Slip Op 30560(U)
February 13, 2026
Supreme Court, New York County
Docket Number: Index No. 451141/2018
Judge: Carol Sharpe
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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. CAROL SHARPE PART 52M

Justice

-----X

INDEX NO. 451141/2018

EUNYOUNG JENNY KIM,

MOTION DATE 12/11/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

HUDSON 888 OWNER, LLC., THE CITY OF NEW YORK,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

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

Defendant Hudson 888 Owner LLC (“Hudson”), filed a motion pursuant to CPLR 3212 seeking summary judgment, dismissing all claims asserted by plaintiff, Eunyoung Jenny Kim, and all crossclaims asserted by Defendant The City of New York (“The City”). Both plaintiff and The City filed opposition. The motion is denied.

Plaintiff alleges that on May 9, 2016, she was injured when she tripped and fell over an uneven portion of a tree well located in front of 610 10th Avenue in New York County. A notice of claim was filed on July 26, 2016, and the summons and complaint were filed on July 28, 2017, in Queens County. Issue was joined when answers were filed by The City who alleged crossclaims against Hudson as the building’s owner. Pursuant to the Order dated December 6, 2017, the matter was transferred to New York County (NYSCEF Doc. #7). Hudson filed for bankruptcy on January 7, 2024, and the matter was stayed until a stipulated Order from United States Bankruptcy Court, Southern District of New York, dated April 3, 2024, lifted the stay solely to permit plaintiff to seek any recovery in this action through Hudson’s insurance and not the bankruptcy estate (NYSCEF Doc. #58).

In its filings, Hudson argues that it owed no duty to plaintiff because the tree well in which she fell is owned and maintained by The City, and that all of The City’s crossclaims fail for the same reason. In

support of its motion, Hudson filed, amongst other things, plaintiff's deposition transcript and the transcript of the deposition of David Dorce, records searcher for the New York City Department of Transportation. The affirmation filed in support of Hudson's motion includes various images of the tree well where the alleged accident took place, as well as an image from the nycgovparks.org website showing the New York City Tree Map near the site of the alleged accident (NYSCEF Doc. #62).

In its opposition, plaintiff argues that Hudson is not entitled to summary judgment because it has not established that the area where the accident took place was a tree well; that Hudson had a duty to maintain the sidewalk pursuant to New York City Administrative Code §7-210 ("Admin Code §7-210") and is attempting to avoid responsibility by characterizing the accident site as a New York City-owned tree well; that the images provided by Hudson are 6 to 8 years after the accident so it is unclear if the area as described by plaintiff in her deposition is the same area and tree well in those photos; and that the New York City Tree Map only identifies the type and location of the trees managed by The City, not the tree wells. Plaintiff filed, amongst other things, the deposition transcripts of plaintiff, Mr. Dorce, and Sheng Zhang, CEO of XDGI Sheng Development International Group, Inc., the parent company of Hudson (NYSCEF Doc. #75).

The City also filed opposition, arguing that summary judgment is inappropriate as there are genuine questions of material fact regarding the nature of the condition where the accident took place and whether Hudson caused the condition. The City argues that the results of records searches did not yield any results showing that the area at issue was a city-owned tree well, and that images provided by Hudson do not show that Hudson is without fault or liability. In support, The City filed, among other things, affirmations of Sharon Lai, and Yelena Bogdanova, both Assistant Records Officers at the Department of Parks & Recreation (NYSCEF Doc. #88 and #90), as well as Google Street photos from May and December of 2014 showing the alleged accident location (NYSCEF Doc. #88).

"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], citing *Winegrad v New York Univ. Med. Center*, 64 NY2d

851, 853 [1985]). “Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the proponent makes the required *prima facie* showing, the burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial (CPLR 3212(b); *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]).

“It is well established that summary judgment may not be granted whenever the pleadings raise clear, well-defined and genuine issues” (*Falk v Goodman*, 7 NY2d 87, 89 [1959]). Upon a motion for summary judgment, the role of the court is issue finding, not issue determination (*Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Esteve v Abad*, 271 AD 725, 727 [1st Dept 1947]). The motion should be denied where different conclusions can reasonably be drawn from the evidence (*Sommer v Federal Signal Corp.*, 79 NY2d 540 [1992]). All evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party’s favor (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 [1st Dept 2010]). Issues of credibility are to be resolved at trial, not by summary judgment (*Castillo v New York City Tr. Auth.*, 69 AD3d 487 [1st Dept 2010]). For a summary judgment motion to be denied, the non-moving party must provide evidence showing that triable issues of fact exist. “To defeat summary judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions, of fact or of law, are insufficient” (*Mallad Constr. Corp. v Cty. Fed. Sav. & Loan Ass’n*, 32 NY2d 285, 260 [1973]; *Freedman v Chem. Constr. Corp.*, 43 NY2d 260, 264 [1977])[“[I]t is elementary that conclusory assertions will not defeat summary judgment. The opponent of a properly made summary judgment motion must present evidentiary facts sufficient to raise a triable issue of fact [internal citation omitted]”]. If there are no material triable issues of fact, summary judgment must be granted (*see Sillman*, 3 NY2d at 404).

Admin Code §7-210 provides in pertinent parts that “[it] shall be duty of the owner of real property abutting any sidewalk...to maintain such sidewalk in a reasonably safe condition” and that “...the owner of real property abutting any sidewalk...shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition.” However, the Court of Appeals has held that Admin Code §7-210 “does not impose civil liability on property owners for injuries that occur in city-owned tree wells.” (*Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 521 [2008]). “[A] property owner may still owe a duty relating to a tree well if it creates a defective condition on it or uses it for a special purpose, such as when it installs an object on it, or varies its construction” [internal citation omitted]” (*Kleckner v Meushar 34th St., LLC*, 80 AD3d 478, 479 [1st Dept 2011]; see *Prete v JJ Hoyt LLC*, ___AD3d___, 2026 NY Slip Op 00458 [1st Dept. 2026]; *Kaminer v Dan’s Supreme Supermarket/Key Food*, 253 AD2d 657 [1st Dept 1998]).

Under the circumstances of this case, Hudson has not sufficiently met its burden to warrant summary judgment. Plaintiff states in her deposition that it did not occur to her that the area in which she fell was a tree well and that there was no tree planted there at the time (NYSCEF Doc. #74, p. 39). The photographs The City submitted from 2014 also show that no tree was planted in the same area prior to Hudson’s purchase and construction at the site. The photographs Hudson submitted to prove that the accident occurred in a New York City-owned tree well were taken several years after the accident and cannot be relied on to prove that the tree well existed at the time of the accident. Hudson also failed to provide any evidence showing that it had no involvement in the creation of the allegedly defective condition as Mr. Sheng did not know the specifics of the construction completed at the site, nor could he readily access those files to confirm (NYSCEF Doc. #75, pp. 16-18).

Furthermore, the affirmations of Ms. Lai and Ms. Bogdonova, show that their searches of Borough Forrestry’s records and Central Forrestry’s records (dating as far back as 2008) yielded no results related to any tree planting or sidewalk repair under the Trees & Sidewalks program, and no service requests, work

orders, complaints, images, or otherwise at the location of the alleged accident - other than one permit found in Ms. Bogdonova's search for which no specific information was provided.

Viewing the evidence in the light most favorable to the non-moving parties, questions of fact still remain as the evidence does not uncontrovertibly prove who or what caused the defect that led to the alleged accident, who owed a duty to plaintiff in maintaining the sidewalk and any tree well, or whether the site of the alleged accident was a New York City-owned tree well at all (see *Kleckner*, 80 AD3d at 479 [motion for summary judgment denied as defendants did not produce any evidence that The City owned or was responsible for the tree well, nor any evidence that they did not create the allegedly defective condition themselves]). Accordingly, the motion must be denied. It is hereby:

ORDERED, that Hudson's motion for summary judgment is denied in its entirety; it is further

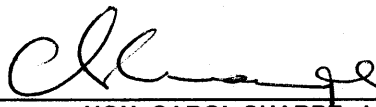
ORDERED, that plaintiff, within twenty (20) days of the date of this Order and file proof of service within (10) days from effectuating said service, shall serve this Order with Notice of Entry upon all parties and the Clerk of the General Clerk's Office; and it is further

ORDERED, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or if it is an e-file case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-filing" page on the court's website).

This constitutes the Decision and Order of the Court.

ENTER:

February 13, 2026
DATE


HON. CAROL SHARPE, J.S.C.
HON. CAROL SHARPE
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE