Williams v City of New York
2026 NY Slip Op 31425(U)
April 8, 2026
Supreme Court, New York County
Docket Number: Index No. 151132/2022
Judge: Carol Sharpe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. CAROL SHARPE** **PART** **52M**

Justice

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CAMMECE WILLIAMS,

Plaintiff,

- v -

THE CITY OF NEW YORK, WEST FIFTH AVENUE REALTY L.P., ET MANAGEMENT & REALTY CORP., GRAB & GO FOOD INC.

Defendant.

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INDEX NO. 151132/2022

MOTION DATE 01/15/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51

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

Upon the foregoing documents, the motion is denied.

Defendants West Fifth Realty L.P. (owner), ET Management & Realty Corp. (managing agent), and Grab & Go Food Inc. (lease holder) (collectively, "West Fifth Defendants"), filed a motion for summary judgment, pursuant to CPLR 3212, dismissing plaintiff's complaint and all cross claims interposed by defendant The City of New York ("The City"), on the grounds that the West Fifth Defendants had no contractual obligation or statutory duty to maintain the sidewalk upon which plaintiff alleges she fell and injured herself, and that they had no role in creating the defective condition she claims caused her fall. Plaintiff filed opposition. The City took no position on the motion.

Plaintiff filed a summons and complaint on February 7, 2022 (NYSCEF Doc. #1), alleging that the defendants failed to maintain or created the defective condition on the sidewalk located at 2096 Fifth Avenue at West 129th Street in New York County, causing her to trip and fall over a raised concrete slab surrounding a manhole cover on June 19, 2021. Issue was joined when each

defendant filed their respective answers with cross-claims. A Consent to Change Attorney form was filed on May 17, 2023, whereby counsel for Grab & Go Food Inc. assumed the defense of West Fifth Avenue Realty L.P. and ET Management & Realty Corp.

West Fifth Defendants seek summary judgment on the grounds that pursuant to 34 RCNY 2-07(b), they are not responsible for maintaining manhole covers or the 12" area surrounding them, which is the area plaintiff described in her 50-h hearing as the site of her accident, because they do not own the manhole covers. In support of its motion, West Fifth Defendants filed, among other things, plaintiff's 50-h hearing transcript (NYSCEF Doc. #49), and photographs of the site where the alleged accident took place (NYSCEF Doc. #50).

Plaintiff opposes the motion on the grounds that West Fifth Defendants have not met their *prima facie* burden entitling them to summary judgment because they have not established that the concrete slab over which plaintiff fell was within 12" of the manhole cover, and that the motion is premature because certain discovery has yet to take place that could establish liability.

"The proponent of a motion for summary judgment [pursuant to CPLR 3212] 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).

Pursuant to New York City Administrative Code §7-210, the owner of real property is responsible for maintaining the sidewalk abutting such property, unless the property is a one- two- or three-family home that is owner-occupied and used for residential purposes only. This includes

"the intersection quadrant for corner property," which the property in the instant matter is, and unless otherwise specified in some other provision of law, the owner is liable for any injuries sustained because of its failure to maintain said sidewalk (NYC Administrative Code §7-210).

Section 34 2-07(b)(1) of the Rules of the City of New York ("RCNY") states, in pertinent part, that "[t]he owners of covers or gratings on a street are responsible for monitoring the condition of the covers, gratings and concrete pads installed around such covers or gratings and the area extending twelve inches outward from the edge of the cover, grating, or concrete pad, if such pad is installed." The Courts have held that for the purposes of 34 RCNY 2-07(b), "street" includes the sidewalk so the owners of the grates and covers are responsible for that portion of the sidewalk regardless of the property owner responsibility required under NYC Administrative Code §7-210 (*see Storper v Kobe Club,* 76 AD3d 426 [1st Dept 2010]; *Hurley v Related Mgt. Co.*, 74 AD3d 648 [1st Dept 2010]).

Here, after reviewing the evidence in the light most favorable to the non-moving party, the movants have not made their *prima facie* case entitling them to summary judgment. West Fifth Defendants have not provided any incontrovertible evidence that the area where plaintiff fell was within 12" of the manhole cover, thus making The City responsible under 34 RCNY 2-07. The photographs provided also lack any measurements which would establish who is responsible for the area where plaintiff allegedly fell. Plaintiff has established that material questions of fact remain thus the motion is premature. Accordingly, it is hereby

ORDERED, that West Fifth Defendants' motion for summary judgment is denied without prejudice; it is further

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

ORDERED, that service of this Order upon the Clerk of the General Clerk's Office 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.

E N T E R:

4/8/26
DATE

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