Pass-Perryman v City of New York
2026 NY Slip Op 31514(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 157910/2020
Judge: Carol Sharpe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

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LAVERNE PASS-PERRYMAN,

Plaintiff,

- v -

THE CITY OF NEW YORK, ROBERT L. WILKINS

Defendant.

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INDEX NO. 157910/2020

MOTION DATE 11/20/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 59, 60, 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

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

Defendant The City of New York ("The City") filed a motion seeking dismissal of plaintiff's complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, or in the alternative, for summary judgment pursuant to CPLR 3212, dismissing all claims and cross-claims against it. Plaintiff filed opposition and The City filed a reply. The motion is granted.

Plaintiff filed a summons and complaint on September 25, 2020, against The City and Robert L. Wilkins, owner of the property located at 243 Lenox Avenue (also known as Malcolm X Boulevard) in New York County (hereinafter the "Property"), alleging that due to a defect in the sidewalk abutting the Property she tripped and fell and was severely injured. Issue was joined when The City filed its answer on December 7, 2020. By Order dated July 7, 2021, the Hon. Lyle E. Frank granted plaintiff's motion for default judgment against Robert L. Wilkins, who to date has not appeared in this action (NYSCEF Doc. #23).

The City is seeking summary judgment on the grounds that it is not the owner of the Property; the Property does not fall into the exemption for one-, two-, or three-family, owner occupied, residential only properties under New York City Administrative Code ("Admin Code") §7-210, thus

the owner is responsible for the sidewalk abutting the Property; and, even if the Court finds that the Admin Code §7-210 exemption is applicable, The City did not have prior written notice of any defect in the sidewalk pursuant to Admin Code §7-201.

In support of its motion, The City filed, amongst other things, plaintiff's 50-h hearing and deposition transcripts (NYSCEF Doc. #68 and #69); the affidavit and records search results of Grace Aitcheson, record searcher at the Department of Transportation of the City of New York ("DOT") (NYSCEF Doc. #72 and #73); the affirmation of David Schloss, Senior Title Examiner at the Office of Corporation Counsel (NYSCEF Doc. #80); the affirmation of David C. Atik, an employee of the City of New York, Department of Finance ("DEF"), who responds to Freedom of Information Law ("FOIL") requests (NYSCEF Doc. #81). The affirmation of Mr. Schloss, which includes the deed to the Property as an exhibit, and the affirmation of Mr. Atik establish that The City does not own the Property, and that the Property is classified as a C5 building with 11 units.

Plaintiff opposes the motion on the grounds that there is a question of fact as to whether the Property falls into the exemption under Admin Code §7-210 as, pursuant to DEF records, the building is classified as "Building Class C5 - Converted Dwelling or Rooming House" containing 11 units, but it is unclear how many units were occupied, and whether Mr. Wilkins resided there at the time of the incident. In support, plaintiff submitted information on the Property from the DEF website's Property Information Portal (NYSCEF Doc. #85).

"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." The statute further states that "the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks *(other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes)* [emphasis added] in a reasonably safe condition." The Court of Appeals has held that interpretations of the statute should align with the actual language therein (*see Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 172 [2019]["This interpretation of section 7-210 disregards our first-order rule that the "text is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning" (*Matter of DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 660, 860 NE2d 705, 827 NYS2d 88 [2006] [citation omitted])... if the City Council meant to exclude a class of owners, it knew how to do so [internal citation omitted]."]).

Here, The City has established its *prima facie* case for summary judgment. The record established that the Property was excluded from the exemption under Admin Code §7-210, thus The City is not liable for any injury proximately caused by failure to maintain the sidewalk. The record also established that The City did not have prior written notice of any defect in the sidewalk near the alleged accident. Plaintiff failed to establish triable issues of material facts. Plaintiff's argument that the Property's classification under Admin Code §7-210 could change based on how many families are actually occupying the units is inconsistent with the statute. Accordingly, it is hereby

ORDERED, that The City's motion for summary judgment is granted in its entirety; it is further

ORDERED, that this action is severed as against The City, and shall continue against the remaining defendant, Robert L. Wilkins, against whom a default judgment has already been granted

by Order dated July 7, 2021; it is further

ORDERED, that The City shall serve a copy of this order with notice of entry within twenty (20) days, and file proof of service within (10) days of such service being completed, upon all parties, the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to enter judgment against defendant Robert L Wilkins. and mark the Court's records accordingly; it is further

ORDERED, that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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); and it is further

ORDERED, that as The City is no longer a party to this action, and no party is represented by Corporation Counsel, this matter is remitted to the Clerk of the General Clerk's Office for reassignment to a General IAS Part, and scheduling of an inquest pursuant to the Order dated July 7, 2021.

This constitutes the Decision and Order of the Court.

ENTER:

April 10, 2026
DATE

HON. CAROL SHARPE, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION	
	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
CHECK IF APPROPRIATE:	[X] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE