Moreno v New York City Hous. Auth.
2026 NY Slip Op 31521(U)
April 13, 2026
Supreme Court, New York County
Docket Number: Index No. 161265/2024
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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ALADAR MORENO

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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INDEX NO. 161265/2024

MOTION DATE 02/21/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 33

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

Plaintiff seeks summary judgment on the issue of liability only pursuant to CPLR 3212. Written opposition and a reply were submitted. The motion is denied.

Plaintiff commenced this action against New York City Housing Authority ("NYCHA") by the filing of the summons and complaint on December 2, 2024, alleging that he sustained injuries on June 14, 2024, when he stepped on an uneven sidewalk located next to a NYCHA building which caused him to fall. NYCHA filed its answer on December 23, 2024.

Plaintiff moves for summary judgment on the grounds that NYCHA had actual or constructive notice of the defect. In support of the motion, plaintiff submitted an engineer report by Scott Silberman; the notice of claim; plaintiff's 50-h transcript; marked photographs; and an EMS report. Plaintiff testified at the 50-h hearing that he was walking with his son when he twisted his ankle and fell. He did not see what caused him to fall, but after he fell, he saw the cracked, broken sidewalk, which he testified he had seen in the past. He described the area around the crack as having about a two-inch height difference. Mr. Silberman, a licensed professional engineer, stated in his report that his measurement of the area showed a two-inch height difference, which

is a tripping hazard, and opined that NYCHA had constructive notice of the defect as the Google photos show that the defect existed for at least five years prior to the accident (NYSCEF Doc. #21).

NYCHA opposes the motion on the grounds that it is premature as depositions have not been held; that the engineer's markings and plaintiff's marking of the area causing the fall are different; that some of the photos are old; and that the issues of negligence, comparative negligence, and proximate cause are questions for the jury.

"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).

Summary judgment may be granted before discovery where the opposition "fail[s] to show that facts essential to justify opposition to the motion may emerge upon further discovery" (*Bailey v New York City Transit Auth.*, 270 AD2d 156, 157, 704 NYS2d 582 [1st Dept 2000]; CPLR 3212(f); *Ruttura & Sons Constr. Co. v J. Petrocelli Constr.*, 257 AD2d 614, 684 NYS2d 286 [2d Dept 1999], *lv dismissed* 93 NY2d 956, 694 NYS2d 356 [1999]).

A landowner has a duty to maintain the property in a reasonably safe condition. To be entitled to liability as a matter of law, plaintiff must establish that NYCHA "either created the condition that caused his accident, or that defendants had actual or constructive notice of the hazardous condition before the accident and failed to correct it [internal citations omitted]" (*Gonzalez v Am. Oil Co.*, 42 AD3d 253, 254, 836 NYS2d 611 [1st Dept 2007]). Here, plaintiff

established at the 50-h hearing that he saw the defect before the date of his accident, although he did not establish when. Mr. Silberman's opinion is partly based on Google pictures from 2019, 2021, and 2023, which do not establish the exact condition of the sidewalk as a matter of law. Viewing the evidence in the light most favorable to the nonmoving party, plaintiff has not established judgment as a matter of law.

Even if plaintiff established his entitlement to summary judgment, defendant's opposition raised triable issues of material fact. The questions of whether the sidewalk was maintained in a reasonably safe condition and how long the defect existed are raised and not answered as a matter of law. Additionally, comparative fault is a question for the jury. "When a defendant's liability is established as a matter of law before trial, the jury must still determine whether the plaintiff was negligent and whether such negligence was a substantial factor in causing plaintiff's injuries. If so, the comparative fault of each party is then apportioned by the jury. Therefore, the jury is still tasked with considering the plaintiff's and defendant's culpability together." (*Carlos Rodriguez, Appellant, v City of N.Y., Respondent.*, 31 NY3d 312, 324, 76 NYS3d 898, 101 NE3d 366 [2018]; *Fortson v Thompson*, 2025 NY Slip Op 03277 [1st Dept 2025]). Defendant also raised the issue of proximate cause which is a question for the trier of the facts. "It is well settled that "[e]vidence of negligence is not enough by itself to establish liability," for it also must be proved that the negligence was a proximate, or legal, cause of the event that produced the harm sustained by the plaintiff (*Sheehan v City of New York*, 40 NY2d 496, 501, 528, 354 NE2d 832, 387 NYS2d 92 [1976])." (*Hain v Jamison*, 28 NY3d 524, 528, 46 NYS3d 502, 68 NE3d 1233 [2016]). "Typically, the question of whether a particular act of negligence is a substantial cause of the plaintiff's injuries is one to be made by the factfinder." (*id.* at 529).

Accordingly, it is hereby:

ORDERED, that plaintiff's partial summary judgment motion as to liability is denied in its entirety; it is further

ORDERED, that plaintiff shall serve a copy of this Decision and Order with Notice of Entry upon all parties, the Clerk of the Court, and the Clerk of the General Clerk's office, within thirty (30) days of the date herein, and file proof of said service within ten (10) days thereafter; and it is further

ORDERED, that service of this Decision and 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:

April 13, 2026
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