

Bernazal v City of New York
2026 NY Slip Op 31554(U)
April 16, 2026
Supreme Court, New York County
Docket Number: Index No. 160360/2024
Judge: Ilana J. Marcus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ILANA J. MARCUS PART 05
Justice
INDEX NO. 160360/2024
ANDREA BERNAZAL, MOTION DATE 12/02/2025
Plaintiff, MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK AND NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT,

DECISION + ORDER ON
MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13-17, 19-22
were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents and oral argument before the court, plaintiff
moves pursuant to CPLR 3212 for partial summary judgment on the issue of
liability against defendants, and to dismiss defendants' affirmative defenses.
Defendants oppose plaintiff's motion and concede on the issue of prior written
notice. Defendants argue that plaintiff fails to tender sufficient evidence to
eliminate all material issues of fact from the case regarding the defendants' alleged
negligence. Plaintiff submits reply. For the reasons set forth herein, plaintiff's
motion is granted in part and to the extent set forth herein, as follows:

BACKGROUND

Plaintiff Andrea Bernazal alleges that on December 22, 2023, at
approximately 6:30 p.m., she was walking on the sidewalk on Grand Street in
Manhattan, between Suffolk Street and Clinton Street, in front of 390 Grand Street,
New York, NY, also known as 62 Suffolk Street / Block 346, Lot 39, when she
tripped and fell on what she describes as a large cracked and raised sidewalk defect.
Plaintiff contends that the lot abutting the sidewalk was owned by the City of New
York through its Department of Housing Preservation and Development. She claims
that as a result of the fall, she sustained injuries including a left wrist fracture,
requiring surgery, and facial injuries.

Plaintiff moves pursuant to CPLR 3212 for summary judgment on the issue of liability, dismissal of defendants' affirmative defenses, and an immediate trial on damages. In support of her motion, plaintiff submits her own affidavit, counsel's affirmation, and proof that the City had prior written notice of the same sidewalk condition through an earlier notice of claim and GML 50-h testimony given by non-party Jane Fuentes. Ms. Fuentes allegedly fell on the same defect in October 2022.

Defendants oppose the motion. The City concedes that it had prior written notice of the alleged condition. However, it disputes the remaining elements of negligence, including whether the sidewalk was in a reasonably safe condition, whether defendants failed to exercise reasonable care, whether the alleged defect was a substantial factor in causing plaintiff's fall and injuries, and whether plaintiff's own culpable conduct contributed to the occurrence.

DISCUSSION

The movant on a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact from the case (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). CPLR 3212(b) provides that a summary judgment motion must be supported by an affidavit of a person with knowledge of the facts, as well as other admissible evidence (*see JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 384-85 [2005]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470 [2013]).

If such a showing is made, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman v City of New York*, 49 NY2d at 562). To meet this burden, the opposing party must "lay bare his proofs and make an evidentiary showing that there exists genuine, triable issues of fact" (*Oates v Marino*, 106 AD2d 289, 291 [1st Dept 1984]). It is well settled that summary judgment should not be granted where there is any doubt as to the existence of a triable issue (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223 [1978]).

In a sidewalk-defect case against the City, prior written notice is a statutory precondition to liability, but it does not by itself establish negligence (*see Weinreb v City of New York*, 193 AD2d 596 [2d Dept 1993]). Even where prior written notice is shown, a plaintiff must still establish that the condition was dangerous, that the

municipality failed to maintain the sidewalk in a reasonably safe condition, and that such negligence was a proximate cause of the accident and resulting injuries (*see Puello v City of New York*, 90 AD3d 529 [1st Dept 2011]; *Tropper v Henry St. Settlement*, 190 AD3d 623 [1st Dept 2021]); *see also Sangaray v West Riv. Assoc., LLC*, 26 NY3d 793 [2016]).

Whether a sidewalk defect constitutes a dangerous condition is generally a question of fact for the jury and depends on all of the surrounding circumstances, including the defect's dimensions, appearance, and place of occurrence (*see Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66 [2015]). Accordingly, summary judgment may be inappropriate where the proof as to the defect is inconclusive (*see id.*).

Here, in support of her motion, plaintiff submits her own affidavit, which states she walking on the sidewalk in front of 390 Grand Street, New York, NY; that "in the sidewalk . . . was a large defect consisting of a large cracked and raised area"; and "[a]s a result of this defect in the sidewalk, I tripped and fell and was injured (*see* NYSCEF Doc. No. 14). Plaintiff further submits a notice of claim with pictures from non-party Jane Fuentes as well as Ms. Fuentes' GML 50-h hearing testimony (*see* NYSCEF Doc. Nos. 16, 17). Notably, plaintiff's notice of claim and her GML 50-h hearing testimony were absent from her submission.

On the record before the court, plaintiff fails to meet her burden of eliminating all material issues of fact from the case. While plaintiff states that as a result of the large cracked and raised area, she tripped, fell, and was injured, she fails to state how the alleged incident specifically took place. Non-party Jane Fuentes' notice of claim and GML 50-h testimony are irrelevant to whether the alleged defect was the proximate cause of plaintiff's injury.

Even assuming plaintiff's vague description of the incident is sufficient to meet her prima facie burden, defendant submits plaintiff's own notice of claim and GML 50-h hearing testimony to establish the existence of material issues of fact which require a trial to resolve.

During her GML 50-h hearing, plaintiff confirmed the four pictures provided in her notice of claim fairly and accurately reflected where she fell (*see* NYSCEF Doc. No. 21, p.29; NYSCEF Doc. No. 20). Two of the pictures are of wide-angle views of a larger portion of the sidewalk showing some general, non-descript cracks and depressions; as well as the rest of paved sidewalk (*see* NYSCEF Doc. No. 20). The other two pictures are close-ups of a single depression with a ruler placed therein (*see id.*). Even with the ruler, the depth of the depression is not readily apparent (*see id.*).

Referring to these photographs, plaintiff was asked the following questions and provided the following responses at her GML 50-h hearing:

Q: . . . Did you trip in a depression in the sidewalk?

A: I just remember the street is all broken, and I tripped, and I just fell like I didn't turn around and look again to see what was happening, but the street is still like all broken up.

Q: With regard to the depression, do you know how deep the depression was?

A: No, I don't know that.

Q: With regard to the crack where you fell, do you know the length and width of that crack?

A: I never measured it, no.

Q: Could you estimate it in good faith?

A: No, I can't.

(NYSCEF Doc. No. 21, pp.33-34). On this record, and applying the rule that the evidence must be viewed in the light most favorable to the nonmovant, the Court cannot conclude as a matter of law that no triable issue exists as to the defect, dangerousness, and/or causation.

Accordingly, plaintiff's motion for summary judgment is granted only to the extent that the Court finds defendants had prior written notice of the alleged sidewalk defect before plaintiff's accident. In all other respects, including plaintiff's request for summary judgment on liability, dismissal of affirmative defenses, and an immediate trial on damages, the motion is denied.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment is granted only to the extent that the Court finds defendants had prior written notice of the alleged sidewalk defect before plaintiff's accident, and is otherwise denied; and it is further

ORDERED that plaintiff shall serve a copy of this order upon defendants with Notice of Entry and shall also file such Notice of Entry with the court with proof of service

This constitutes the decision and order of the court.

04/16/2026
DATE


ILANA J. MARCUS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
			<input type="checkbox"/>	REFERENCE	