SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ILANA J. MARCUS** **PART** **05**

Justice

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CARMEN CARMONA,

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

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INDEX NO. 158699/2016

MOTION DATE 12/29/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 88-107, 109-111 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendant the City of New York (the City) moves pursuant to CPLR 3212 for summary judgment dismissal of plaintiff Carmen Carmona's complaint. Plaintiff opposes the motion. For the reasons set forth herein, the motion is granted, and the action is dismissed.

BACKGROUND

Plaintiff alleges that on October 28, 2015, while walking in the roadway on Third Avenue between East 126th Street and East 127th Street, more specifically in front of 2322 Third Avenue, she stepped into an uncovered fire-hydrant valve box/open hole and fell, sustaining personal injuries. The notice of claim, complaint, and bill of particulars place the occurrence in the roadway and describe the defect as an uncovered or unprotected valve box adjacent to a hydrant.

This is defendant City of New York's second motion seeking summary judgment. By Decision and Order dated October 12, 2023, defendant's first motion, filed pre-note of issue, was denied without prejudice to its refiling at the conclusion of discovery (*see* NYSCEF Doc. No. 69). Plaintiff since filed her note of issue dated October 30, 2025, certifying that discovery is complete (*see* NYSCEF Doc. No. 86).

Defendant in the instant motion moves for summary judgment dismissing the complaint pursuant to CPLR 3212, contending that the action is barred by Administrative Code of the City of New York §7-201(c)(2) because the City lacked prior written notice of the specific defect. In support, the City relies on Department of Transportation (DOT) and Department of Environmental Protection (DEP) record searches, affidavits concerning those searches, and the deposition testimony of FDNY Lieutenant Jihyun Park. The City argues it did not receive prior written notice of the alleged open valve-box condition and that no exception to the prior written notice rule applies.

Plaintiff opposes, arguing that defendant did not meet its prima facie burden because it failed to produce DEP valve-box maintenance or inspection records, and a DEP witness with personal knowledge of valve-box inspection and maintenance practices for deposition. Consequently, plaintiff argues that defendant failed to demonstrate that the records of the agency responsible were adequately searched. Plaintiff further contends that the motion remains premature under CPLR 3212(f), and that defendant did not affirmatively establish that it did not create the condition.

In reply, defendant argues that plaintiff's opposition rests on the mistaken premise that DEP conducts the relevant hydrant inspections. Defendant maintains that pursuant to Administrative Code § 15-134, the FDNY conducts the biannual hydrant inspections required by Administrative Code § 15-134(a). Defendant further argues that as per Lt. Park's deposition testimony, the FDNY's inspections do not include inspection of the valve boxes (*see* NYSCEF Doc. No. 103). Moreover, defendant states it in fact produced the DEP's electronic record search (*see* NYSCEF Doc. No. 104), which disclosed no complaints, work orders, inspections, or daily activity reports for the subject location. Lastly, defendant argues that plaintiff's filing of the note of issue forecloses any claim that the motion is premature.

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]). Once 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]).

Administrative Code § 7-201(c)(2) provides, in substance, that no civil action shall be maintained against the City for injuries sustained by reason of a street, highway, bridge, wharf, culvert, sidewalk, or crosswalk being out of repair, unsafe, dangerous, or obstructed unless written notice of the defective condition was actually given to the Commissioner of Transportation or another statutorily designated official at least 15 days before the occurrence, and there was a failure or neglect to remedy the condition within that timeframe. Therefore, where the alleged defect is in the roadway, the prior written notice requirement applies. Notice must be of the specific defect alleged to have caused the accident, not merely of a similar or nearby condition (*see D'Onofrio v City of New York*, 11 NY3d 581 [2008]; *Belmonte v Metropolitan Life Ins. Co.*, 304 AD2d 471 [1st Dept 2003]).

There are two recognized exceptions to the prior written notice rule: where the municipality affirmatively created the defect through an act of negligence that immediately resulted in the dangerous condition, or where a special use confers a special benefit upon the municipality (*see Yarborough v City of New York*, 10 NY3d 726 [2008]). The affirmative-negligence exception is narrow; proof of municipal work that merely may have contributed to a defect over time is insufficient (*see id.*). Rather, a plaintiff must show work by the municipality that immediately resulted in the existence of the dangerous condition (*see id.*; *Oboler v City of New York*, 8 NY3d 888 [2007]). Once the municipality establishes lack of prior written notice, the burden shifts to plaintiff to raise a triable issue of fact as to one of the exceptions (*see Cardona v City of New York*, 305 AD2d 303 [1st Dept 2003]).

Finally, to the extent plaintiff's theory is recast as one of negligent municipal inspection or failure to inspect, such a theory generally does not furnish a basis for liability absent a special duty, because a municipality's duty to inspect and enforce safety laws is owed to the public at large, not to any specific individual (*see O'Connor v City of New York*, 58 NY2d 184 [1983]).

In the case at bar, the location of the alleged defect is not meaningfully disputed. Plaintiff's own pleadings and testimony place the accident in the roadway, adjacent to a hydrant valve box. Therefore, Administrative Code § 7-201(c)(2) governs.

On the issue of prior written notice, defendant makes a prima facie showing that it lacked written notice of the specific defect alleged. Defendant submitted DOT and DEP searches for the relevant location and time period which do not identify any written notice addressed to the specific open valve-box condition at issue. The law

requires notice of the particular defect alleged to have caused the injury, not merely evidence of some similar condition in the general vicinity (*see D'Onofrio*, 11 NY3d 581).

Plaintiff fails to rebut defendant's showing with contrary evidence of actual written notice. Instead, plaintiff argues that the City's proof is inadequate because it did not provide DEP maintenance personnel or additional DEP valve-box inspection records. Plaintiff's argument is unpersuasive.

Defendant established that the FDNY performs the biannual hydrant inspections under Administrative Code § 15-134(a), and Lt. Park's deposition testimony established that those inspections do not encompass valve boxes (*see* NYSCEF Doc. No. 103, Park Deposition, pp 25-29). Lt. Park elaborated that the FDNY does not inspect valve boxes and only when a problem is found, would the DEP be notified of a valve box issue pursuant to an FDNY hydrant inspection (*id.* at p 27). Furthermore, by response dated December 10, 2024, the City provided the DEP's electronic record search; which found no complaints, work orders, inspections, or daily activity reports for the subject location for the period of October 28, 2013 to October 28, 2015. On this record, plaintiff fails to show that further unspecified DEP material would likely reveal prior written notice of the specific open valve-box defect.

Likewise, plaintiff fails to raise a triable issue under the affirmative-negligence exception. Plaintiff was required to adduce evidence that defendant performed work that immediately resulted in the dangerous condition (*see Yarborough*, 10 NY3d 726). Plaintiff did not identify any such work.

The Court also rejects plaintiff's prematurity argument. While CPLR 3212(f) may warrant denial where essential facts remain within the movant's exclusive control, plaintiff filed a note of issue and certificate of readiness certifying that discovery was complete. Defendant also supplied record-search evidence and an agency witness addressing the relevant hydrant inspection practices. On this record, plaintiff's assertion that some additional DEP proof may exist is too speculative to warrant denial of the motion as premature.

Defendant makes 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; namely, that this roadway-defect action is subject to Administrative Code § 7-201(c)(2), that it lacked prior written notice of the specific defect alleged to have caused plaintiff's fall, and that plaintiff has failed to raise a triable issue of fact either as to prior written notice, as to the affirmative-negligence exception, or as to prematurity under CPLR 3212(f). Viewing the evidence in the light most favorable to plaintiff, no material issue of fact requiring a trial is presented. Accordingly, defendant's motion for summary judgment dismissing the complaint is granted.

Accordingly, it is hereby ORDERED that defendant's motion for summary judgment is granted and the action is dismissed. The clerk of the court is directed to enter judgment in favor of defendant.

This constitutes the decision and order of the court.

4/10/2026
DATE

ILANA J. MARCUS, J.S.C.

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