

Webb v City of New York
2026 NY Slip Op 31710(U)
March 18, 2026
Supreme Court, Queens County
Docket Number: Index No. 708839/2020
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

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Index No.: 708839/2020

COLLETTE WEBB,

Motion Date: 1/5/2026

Plaintiff,

Motion Cal. No.: 37

-against-

Motion Sequence No.: 2

THE CITY OF NEW YORK, CHARLES PRICE and
LENA PRICE,

Defendants.

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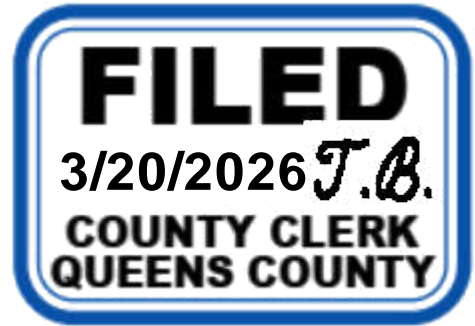
The following e-file papers numbered 49-81 submitted and considered on this motion by Defendant the City of New York (hereinafter "City") seeking an order pursuant to CPLR 3212 granting summary judgment in favor of the City.

Motion Sequence 2

Papers
Numbered

Notice of Motion-Affirmation in Support-
Affidavits-Exhibits.....
Affirmation in Opposition-Affidavits-Exhibits...
Affirmation in Reply-Affidavits-Exhibits.....

EF 49-71
EF 72-79
EF 80-81



Relevant Factual and Procedural Background

Webb opposes the City’s motion for summary judgment, which seeks dismissal of the complaint on the ground that the City lacked prior written notice of the alleged sidewalk defect and that no exception to the prior written notice requirement applies. The City contends that Webb allegedly tripped and fell on January 5, 2020 on the sidewalk in front of 116-31 195th Street in Queens, and that because the accident involved a sidewalk defect, Webb cannot maintain this action absent proof that the City received the statutorily required written notice, or that one of the limited exceptions to that requirement applies.

As to the procedural history, Webb served a notice of claim on or about January 27, 2020, which included photographs of the accident location taken after the accident. Webb thereafter commenced this action on or about June 30, 2020. The City joined issue in July 2020, and defendants Charles Price and Lena Price joined issue in August 2020. A case scheduling order was

issued in April 2021, and a compliance conference order was issued in August 2021. Webb filed an initial note of issue on May 24, 2023. Charles Price and Lena Price thereafter moved for summary judgment, arguing that they were exempt from sidewalk liability as owners of a single-family home. By order dated January 12, 2024, the Court granted summary judgment to Charles Price and Lena Price. Webb appealed from that order. According to Webb, after the initial note of issue had been filed and after the 120-day summary judgment period had expired, the parties later appeared for a pretrial conference and stipulated on July 25, 2024 to vacate the original note of issue, not because discovery was incomplete, but to accommodate the pending appeal and to allow Webb to re-file a new note of issue by May 30, 2025. Webb re-filed the note of issue on May 19, 2025. The City argues that its present motion, filed within 120 days of the filing of that second note of issue, is timely. Webb argues that the City forfeited summary judgment when it failed to move within 120 days of the first note of issue and that the later vacatur and re-filing of the note of issue did not revive the City's expired deadline because discovery had already been completed and the case was removed from the trial track for calendaring and appellate reasons rather than because of outstanding disclosure.

On the merits, Webb testified at a General Municipal Law hearing and later at deposition that she fell at approximately 7:05 p.m. on January 5, 2020 while walking on the sidewalk in front of 116-31 195th Street on her way to visit her son, who lived next door. She testified that she tripped on an uneven sidewalk condition when her left foot struck the raised portion of the sidewalk. Webb contends that the post accident photographs included with the notice of claim show a height differential of several inches caused by tree roots and that such condition was sufficiently substantial to constitute an actionable defect.

The City relies on the testimony of Lena Price, one of the adjoining property owners, and on the testimony of City record searchers from the Department of Transportation and the Department of Parks and Recreation. Lena Price testified that she had lived at 116-31 195th Street for decades, that she and her son owned the one-family house, and that she had noticed a tree abutting the sidewalk in front of the property and believed the tree roots were causing the sidewalk to rise. She testified that she had repairs made to the sidewalk at her own expense multiple times over the years, most recently in approximately 2018, and that after that repair the sidewalk was fixed and no longer bumpy. She further testified that before the 2018 repair she called 311 several times to report that tree roots were lifting the sidewalk, and that after the 2018 repair but before Webb's accident she again called the City to report that tree roots were raising the sidewalk. According to Webb, Lena Price further testified that these complaints had been made repeatedly over a period of roughly twenty years, about five or six times or perhaps several times over the years, each time reporting that the tree roots were lifting the sidewalk. Webb relies heavily on that testimony to argue that the City's records search was too narrow and did not address the actual period when the complaints were made. The City, however, points to Lena Price's testimony that the sidewalk was repaired in 2018 and argues that no admissible proof shows the City ever received prior written notice of the specific sidewalk condition that existed on the date of the accident.

The City also relies on the testimony and affidavits of its record searchers. A DOT records search was conducted for the block segment containing the accident location for the period from

January 5, 2018 through January 5, 2020. The City contends that this search encompassed multiple complaint and records databases, including 311-related analytics, sidewalk management records, curb complaints, agency response tracking materials, social media complaints, and notice-of-claim spreadsheets, and that the search yielded permits, applications, inspections, and Big Apple maps, but no complaints, no sidewalk violations, no maintenance or repair records, and no records constituting prior written notice of the alleged defect. The City further argues that the permits and inspection records that were produced related to other work, including roadway restoration, curb and pedestrian ramp work at nearby locations and inspections concerning an abandoned pole, and did not demonstrate any work performed by the City on the sidewalk flag where Webb allegedly fell. The City also relies on the fact that the Big Apple maps located during the search did not mark the alleged defect at the accident location. In addition, the City served a supplemental DOT search performed in August 2025, which, according to the City, again failed to disclose any records establishing prior written notice.

The City separately relies on a Parks Department records search. That search covered the same two-year period prior to and including the accident date and was directed to forestry and sidewalk-related records for the property. According to the City, the search yielded no 311 complaints, service requests, inspections, work orders, contract records, tree-and-sidewalk program records, permit applications, or other Parks records demonstrating notice of the alleged condition. The supplemental production from Parks included only street-view images depicting the front of the property. Based on these searches, the City contends that it established as a matter of law that it did not receive prior written notice of the alleged sidewalk defect.

Webb opposes on both procedural and substantive grounds. Procedurally, Webb argues that the motion is untimely because the City failed to seek summary judgment within 120 days of the original note of issue filed in May 2023, when discovery was allegedly complete, and that the later vacatur of the note of issue pursuant to stipulation did not restart the summary judgment deadline. Webb maintains that the second note of issue was filed only to bring the matter back toward trial while the appeal concerning Charles Price and Lena Price remained pending, and that the City cannot revive a previously waived dispositive motion deadline by relying on the new filing date.

Substantively, Webb argues that the City failed to make a prima facie showing because its records search was artificially restricted to the two-year period immediately preceding the accident, while the proof from Lena Price establishes that relevant complaints were made well before 2018. Webb acknowledges that verbal 311 complaints do not themselves constitute prior written notice, but argues that the point of such complaints is to prompt City inspection and internal documentation. According to Webb, once the City receives a complaint and conducts an inspection, the resulting internal writing, such as an inspection record or corrective action request, may constitute prior written acknowledgment of the defect. Webb therefore contends that because the defect existed for many years, as shown in Google Earth street-view images from 2012, 2013, and 2017, and because Lena Price testified to repeated complaints over a twenty-year period, the City cannot establish lack of prior written acknowledgment by searching only a two-year period in which no such complaints were made. Webb argues that the City's approach guarantees a

negative result and fails to address whether earlier complaints generated internal City writings acknowledging the defect. Webb further argues that the defect shown in the post-accident photographs is the same longstanding tree-root condition visible in the street-view imagery and that the City has not disproved the existence of internal writings or corrective requests generated in response to the earlier complaints. Webb thus contends that the City's proof is insufficient on its face and that the motion should be denied even apart from the timeliness issue.

The City replies that its motion is timely because the original note of issue was vacated and a new note of issue was filed, and the motion was made within 120 days of that new filing. The City argues that this case is governed by authority holding that when a new note of issue is filed after the earlier one has been vacated, the summary judgment deadline runs from the later filing date. The City distinguishes the authorities cited by Webb on the ground that those cases involved matters stricken from the trial calendar rather than a vacated note of issue. On the merits, the City argues that it met its burden through the DOT and Parks searches and witness testimony and that once it demonstrated the absence of prior written notice in the standard two-year search period, the burden shifted to Webb to raise a triable issue of fact. The City contends that Webb had a full opportunity during discovery to request a broader search if she believed additional records existed, but instead filed the note of issue and certified the case as trial ready. The City therefore characterizes Webb's present argument as an improper attempt to fault the City for not developing Webb's theory of the case on her behalf. The City also argues that the standard two-year records search is sufficient to establish the absence of prior written notice and that Webb's speculation that earlier 311 complaints may have led to inspections or internal records is not enough to defeat summary judgment. Finally, the City maintains that there is no evidence that either exception to the prior written notice rule applies, as there is no proof of any special use by the City or any affirmative act of negligence by the City that immediately created the alleged sidewalk defect.

Law and Application

CPLR §3212 provides:

(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it

shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion...

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Rev 5, LLC v Congregation Beth Elohim*, 229 AD3d 820 [2d Dept 2024]). “Once a prima facie showing has been made, however, 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” (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; citing *Zuckerman v City of New York*, 49 NY2d at 562 [1980]). Summary judgment is a drastic measure that deprives a litigant of his or her day in court, and it should only be employed when there is no doubt as to the absence of triable issues (*see 114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC*, 178 AD3d 757, 759 [2d Dept 2019]; *Castlepoint Ins. Co. v Command Sec. Corp.*, 144 AD3d 731, 733 [2d Dept 2016]; *Doize v. Holiday Inn Ronkonkoma*, 6 A.D.3d 573, 774 N.Y.S.2d 792 [2nd Dept. 2004]). “In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party” (*see Moonilal v R.C. Church of St. Mary Gate of Heaven*, 225 AD3d 592, 593 [2d Dept 2024]; citing *Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023]; *see also Adams v Bruno*, 124 AD3d 566, 567 [2d Dept 2015]).

“A municipality that has enacted a prior written notification law may avoid liability for a defect or hazardous condition that falls within the scope of the law if it can establish that it has not been notified in writing of the existence of the defect or hazard at a specific location” (*see Id* at 903, 904; citing *Broome v City of New York*, 210 AD3d 857, 857 [2d Dept 2022]; *Smith v City of New York*, 210 AD3d 53 [2d Dept 2022]; *Torres v Inc. Vil. of Rockville Ctr.*, 195 AD3d 974, 975 [2d Dept 2021]). “A Big Apple map submitted to the Department of Transportation may serve as prior written notice of a defective condition” (*see Rodriguez v City of New York*, 152 AD3d 810,

810 [2d Dept 2017]; citing *Walker v Jenkins*, 137 AD3d 1014, 1015 [2d Dept 2016]; *Katz v City of New York*, 87 NY2d 241, 243 [1995]; *Vertzberger v City of New York*, 34 AD3d 453, 455 [2d Dept 2006]; *Cassuto v City of New York*, 23 AD3d 423, 424 [2d Dept 2005]).

In the case at hand, the Court finds that the City has failed to eliminate all triable issues of fact with regards to whether the City lacked prior written notice of the alleged defective condition. Although the City relies upon its records searches and the absence of complaints within the two-year period preceding the accident, contrary to the City's contentions, the Big Apple map submitted by the City itself reflects a marking denoting a raised or uneven sidewalk in close proximity to the alleged accident location, situated between 116-31 and 116-35 195th Street. While the marking may appear closer to the adjacent property, it is located on the same continuous sidewalk path and immediately adjacent to the location where Plaintiff alleges she fell.

Under similar circumstances, the Appellate Division, Second Department has held that whether a Big Apple map marking at an adjacent location provided prior written notice presents a question of fact for the jury to resolve (*see Vertzberger v City of New York*, 34 AD3d 453, 456 [2d Dept 2006]). Moreover, even where there is a discrepancy between the condition described by a plaintiff and the symbol reflected on the Big Apple map, such differences do not warrant dismissal as a matter of law, but instead present factual issues for a jury (*see Almadotter v City of New York*, 15 AD3d 426, 427 [2d Dept 2005]).

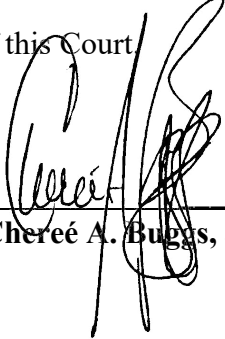
Here, the condition alleged by Plaintiff as a raised and uneven sidewalk may reasonably correspond to the condition depicted on the Big Apple map, notwithstanding any variation in terminology or precise placement. Given the proximity of the marking to the alleged accident location, and the nature of the defect indicated, the Court cannot conclude, as a matter of law, that the City lacked prior written notice.

Moreover, the Court is not persuaded by the City's reliance on a records search limited to the two-year period preceding the accident in light of deposition testimony indicating that complaints regarding the subject condition were made over a significantly longer period of time. Contrary to the City's contentions, as the movants for this summary judgment motion, it is their burden to establish prima facie that they received no prior written notice, and not Webbs. Hence, the City's argument that Webb had ample time to request for a search period longer than 2 years but failed to do so is without merit. Under these circumstances, this Court finds that the City has failed to establish, as a matter of law, that it did not receive prior written notice or written acknowledgment of the alleged defect. Since the City has failed to meet its burden here, this Court need not consider the sufficiency of the opposing papers (*see Cendant Car Rental Group v Liberty Mut. Ins. Co.*, 48 AD3d 397, 398 [2d Dept 2008]). Accordingly, it is hereby

ORDERED, that the City's motion for summary judgment is **denied**.

The foregoing constitutes the Decision and Order of this Court.

Date: March 18, 2026



Hon. Chereé A. Buggs, JSC

