

<b>Fryar v St. Paul Community Church</b>
2026 NY Slip Op 31763(U)
April 21, 2026
Supreme Court, New York County
Docket Number: Index No. 160777/2020
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. HASA A. KINGO PART 65M**

*Justice*

-----X

TISHA FRYAR,

Plaintiff,

- v -

ST. PAUL COMMUNITY CHURCH, 262 WEST 145TH V&A  
LLC, USA VEIN CLINICS LLC, ST. NICHOLAS MEDICAL OF  
NEW YORK LLC, MEDICAL MANAGEMENT  
PROFESSIONAL SERVICES, INC .

Defendant.

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INDEX NO. 160777/2020

MOTION DATE N/A

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 141, 142, 143, 144, 146, 161, 162

were read on this motion to/for SUMMARY JUDGMENT.

Defendant 262 WEST 145TH V&A LLC (“262 West”) moves, pursuant to CPLR § 3212, for summary judgment dismissing the complaint and all cross-claims as against it. Plaintiff TISHA FRYAR (“plaintiff”) opposes the motion.

262 West’s principal argument in support of its motion rests on its contention that the alleged sidewalk defect that caused plaintiff’s accident was not situated on the sidewalk abutting its property; that it neither owned, occupied, controlled, nor made special use of the area where plaintiff fell; and that it neither created the condition nor had actual or constructive notice of its existence.

Upon the foregoing papers, the motion is granted.

**BACKGROUND AND PROCEDURAL HISTORY**

This is a sidewalk trip-and-fall action arising from an accident alleged to have occurred on June 22, 2020, on West 145th Street in Manhattan, in the area between the buildings known as 256 West 145th Street and 262 West 145th Street. Plaintiff alleges that she tripped and fell because of a broken, cracked, uneven, raised, depressed, and otherwise defective sidewalk condition.

Plaintiff commenced the action by summons and complaint dated December 9, 2020, and later filed a supplemental summons and amended complaint adding additional defendants. 262 West answered the amended complaint, and the tenant defendants also interposed answers with cross-claims. Plaintiff thereafter served a bill of particulars alleging, among other things, negligent

ownership, operation, management, maintenance, control, supervision, inspection, and repair of the sidewalk, and asserting actual and constructive notice of the alleged defect.

A note of issue was filed on or about August 21, 2025. 262 West previously moved for summary judgment, but that motion was withdrawn without prejudice after St. Paul Community Church, which had not previously appeared, entered the case and further discovery was contemplated. Thereafter, by decision and order dated December 23, 2025, the complaint against St. Paul Community Church was dismissed as abandoned pursuant to CPLR § 3215(c). 262 West then renewed its application for summary judgment on the same substantive grounds.

At her deposition, plaintiff testified that she was walking eastbound on West 145th Street toward a hair salon on a hot, sunny day, with no obstruction to her view. She testified that the accident occurred between the vein clinic and the church, in what “looked like a little alleyway,” which she expressly described as “a part of the church,” and more specifically “in front of the alleyway that was a part of the church.” Plaintiff further testified that her right foot “went down in like a hole,” that she then tripped over the crack, and that she circled on marked photographs the area in front of the gate, toward the curb, as the location of her fall. The marked photograph submitted with the motion depicts the circled location in front of the gated alleyway adjoining the church side of the streetscape.

262 West’s witness, Victor Maleh, testified that 262 West owned the one-story commercial building at 262 West 145th Street, that the alleyway and gate adjacent to the USA Vein Clinic storefront did not belong to 262 West, and that the boundary of 262 West’s building began at the wall of the vein clinic. He testified that 262 West had no connection to the use of the alleyway, that access to it required the church to open the gate, that neither he nor anyone on behalf of 262 West ever performed work in the alleyway or on the circled slab area identified by plaintiff, and that the circled area in the marked photograph was “the area in front of the gate that is controlled by the church” and “in front of the church’s property.” He also testified that he had received no complaints or violations concerning that area.

In support of the motion, 262 West also submitted the affidavit of Donal O’Buckley, a licensed land surveyor, who stated that he conducted a survey of 256 and 262 West 145th Street, reviewed the photographs marked at plaintiff’s deposition, and concluded that the defect identified by plaintiff was within the property boundary lines of St. Paul Community Church at 256 West 145th Street. In reply, 262 West further submitted a supplemental affidavit from O’Buckley annexing the boundary survey, inspection photographs, and deed materials said to underlie his opinion. The reply also emphasized that plaintiff had offered no survey, expert affidavit, or other proof showing that any condition on 262 West’s own abutting sidewalk proximately caused the accident.

## ARGUMENTS

More specifically, 262 West argues that it is entitled to judgment as a matter of law because the undisputed record demonstrates that plaintiff fell in front of the church-controlled alleyway, on the sidewalk abutting 256 West 145th Street rather than 262 West 145th Street. It relies principally on plaintiff’s own deposition testimony, the marked photographs, Maleh’s testimony,

and the surveyor's affidavit. 262 West further contends that it did not create the defect, did not make special use of the area, and had no actual or constructive notice of the condition. It also argues that plaintiff's reliance on Administrative Code of the City of New York § 7-210 and *Sangaray v West River Assoc., LLC* is misplaced because there is no evidence that any condition on 262 West's own abutting sidewalk was a proximate cause of plaintiff's fall.

Plaintiff contends that 262 West has failed to make a prima facie showing. Plaintiff argues that 262 West improperly frames the issue as whether the defect was on its "property line," rather than whether the sidewalk abutting its premises was maintained in a reasonably safe condition under Administrative Code § 7-210. Plaintiff also argues that the original surveyor affidavit was conclusory because it did not annex the survey, photographs, deeds, or a sufficient recitation of qualifications, and that the photographs leave open the possibility that the defect straddled both properties. Relying on *Sangaray v West River Assoc., LLC* (26 NY3d 793 [2016]), plaintiff further contends that even if the precise defect was not wholly in front of 262 West, 262 West still had a statutory, nondelegable duty to maintain its own abutting sidewalk in a reasonably safe condition and was required to show that no failure on its part proximately caused the accident. Plaintiff also argues that Maleh's testimony, including his claimed lack of recollection concerning aspects of the area, fails to eliminate triable issues as to constructive notice.

In reply, 262 West argues that plaintiff has misread *Sangaray*, because that decision does not impose liability on a neighboring landowner absent proof that a condition on that landowner's own abutting sidewalk was a proximate cause of the accident. 262 West maintains that plaintiff has submitted no evidence whatever, expert or otherwise, that any condition on the 262 West side contributed to her fall, and that the undisputed testimony and survey proof establish that the accident occurred in front of the church alleyway, not on 262 West's abutting sidewalk.

## DISCUSSION

Summary judgment is a drastic remedy, but it is properly granted where the movant tenders sufficient evidence to demonstrate the absence of any material issue of fact and entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]). Once the movant has met that burden, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Administrative Code § 7-210 imposes upon an owner of real property abutting a sidewalk the duty to maintain that sidewalk in a reasonably safe condition and renders the owner liable for injury proximately caused by its failure to do so (Administrative Code § 7-210[a], [b]). As the Court of Appeals explained in *Sangaray v West River Assoc., LLC* (26 NY3d 793, 799 [2016]), the location of the defect remains significant because it bears directly on which owner owed the pertinent statutory duty, but a neighboring landowner may also face liability where a failure to maintain its own abutting sidewalk in a reasonably safe condition was itself a proximate cause of the injury. Thus, *Sangaray* does not eliminate the requirement of proximate cause; rather, it makes plain that liability is tied to a breach of the statutory duty to maintain one's own abutting sidewalk where that breach caused the accident (*id.* at 799-800).

Applying those principles here, 262 West has met its prima facie burden. The motion record establishes, through plaintiff's own testimony, that the accident occurred "between the [v]ein clinic and the church," in what appeared to be "a little alleyway," which plaintiff specifically identified as "a part of the church," and more particularly "in front of the alleyway that was a part of the church." Plaintiff then marked the accident location on photographs as the second flag in front of the gate area, toward the curb. Maleh's testimony is fully consistent with that account. He testified that the alleyway and gate did not belong to 262 West, that the boundary of 262 West began at the wall of the vein clinic, that the church controlled the gate, and that the circled area was in front of the church's property. O'Buckley's surveyor affidavit likewise locates the identified defect within the boundary lines of 256 West 145th Street. Taken together, this proof sufficiently demonstrates that the defect identified by plaintiff was not on the sidewalk abutting 262 West's property, but rather on the sidewalk in front of the church-controlled alleyway.

The court is unpersuaded by plaintiff's contention that 262 West's showing fails merely because the original surveyor affidavit did not annex every underlying document. Even apart from the supplemental reply submission, the original motion papers included plaintiff's own admissions concerning where she fell, the marked photographs, Maleh's testimony identifying the boundary and church-controlled area, and O'Buckley's sworn professional conclusion that the defect was within the boundary lines of 256 West 145th Street. That proof was sufficient to satisfy 262 West's prima facie burden. To the extent the supplemental O'Buckley affidavit and annexed survey materials were offered in reply, the court considers them only insofar as they respond to the procedural objections raised in opposition and as further confirmation of a prima facie showing already made on the original motion papers. They are not necessary to the court's determination that 262 West met its initial burden.

Nor does *Sangaray* require denial of the motion. In *Sangaray*, there was proof that the neighboring owner's own abutting sidewalk condition may have contributed to the plaintiff's fall, including survey and engineering evidence showing that most of the relevant flag fronted that neighbor's property and that the neighbor's sunken sidewalk condition could have caused the accident (*Sangaray*, 26 NY3d at 796, 799-800). Here, by contrast, plaintiff has produced no evidence that any condition on 262 West's own abutting sidewalk was defective, uneven, sunken, raised, or otherwise a proximate cause of her injuries. Plaintiff did not testify that she tripped because of any condition in front of the vein clinic or elsewhere on the 262 West side. She testified, instead, that her foot went into a hole in front of the church alleyway. Plaintiff has submitted no expert affidavit, survey, engineering proof, or even a marked photograph establishing that the defect straddled the 262 West property or that any failure by 262 West to maintain its own abutting sidewalk contributed to the accident. On this record, plaintiff's reliance on *Sangaray* is entirely speculative.

The record likewise establishes that 262 West neither created the alleged defect nor made special use of the area where plaintiff fell. Liability for a dangerous condition generally rests upon ownership, occupancy, control, or special use (*Balsam v Delma Eng'g Corp.*, 139 AD2d 292, 296-297 [1st Dept. 1988]). In sidewalk cases, where an owner neither owns nor controls the area of the defect, liability cannot be imposed absent proof that the owner created the condition or caused it by special use (*Hausser v Giunta*, 88 NY2d 449, 452-453 [1996]). Here, Maleh testified unequivocally that neither he nor anyone on behalf of 262 West performed work in the alleyway

or on the circled slab area, that 262 West had no connection to the use of the gated alleyway, and that access to the area required the church to open the gate. Plaintiff offers no contrary proof beyond conjecture. That is insufficient to raise a triable issue of fact (*Alvarez*, 68 NY2d at 324-325; *Zuckerman*, 49 NY2d at 562).

Plaintiff's contention that 262 West failed to eliminate issues of constructive notice is also unavailing. Because the motion record establishes that the alleged defect was not on the sidewalk abutting 262 West's premises, and because plaintiff has failed to identify any defect on 262 West's abutting sidewalk that contributed to her fall, the question of notice to 262 West as to the church-side condition is beside the point. In any event, Maleh testified that he had received no complaints or violations concerning the area and that no one on behalf of 262 West had performed work there. Plaintiff's criticism that Maleh sometimes said he did not remember certain matters does not itself create a material issue of fact where plaintiff offers no affirmative evidence contradicting the central and specific testimony identifying the accident site as the church-controlled area (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838 [1986]; *Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]).

Finally, the court rejects plaintiff's suggestion that a triable issue exists merely because the photographs could, in the abstract, be interpreted differently. The photographs must be read in conjunction with the sworn testimony identifying them. Plaintiff herself marked the location in front of the gate area and repeatedly described that location as part of the church alleyway. Maleh then identified that same circled area as in front of the church property. Plaintiff has not come forward with any competent proof from a surveyor, engineer, or other witness establishing that the circled area straddled the 262 West boundary or that any portion of 262 West's own sidewalk was causally implicated. Mere speculation that the defect may have extended across a boundary line is insufficient to defeat summary judgment (*see Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]).

Accordingly, 262 West has established, prima facie, that plaintiff's accident was caused by a defect located on the sidewalk in front of the church-controlled alleyway at 256 West 145th Street, that 262 West neither owned nor controlled that area, that it did not create the condition or make special use of it, and that plaintiff has failed to raise a triable issue of fact that any condition on 262 West's own abutting sidewalk was a proximate cause of the accident. Summary judgment dismissing the complaint and all cross-claims as against 262 West is therefore warranted.

Accordingly, it is hereby

ORDERED that the motion of defendant 262 WEST 145TH V&A LLC for summary judgment pursuant to CPLR § 3212 is granted in its entirety; and it is further

ORDERED that the complaint and all cross-claims are dismissed as against defendant 262 WEST 145TH V&A LLC; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of defendant 262 WEST 145TH V&A LLC; and it is further

ORDERED that the action shall continue as against any remaining defendants.

This constitutes the decision and order of the court.

4/21/2026

DATE

HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE