McKenzie v Grinberg Residential Mgt. LLC
2026 NY Slip Op 31811(U)
April 27, 2026
Supreme Court, New York County
Docket Number: Index No. 153947/2019
Judge: Phaedra F. Perry-Bond
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART 35**

Justice

---X

WAKEEM MCKENZIE,

Plaintiff,

- v -

GRINBERG RESIDENTIAL MANAGEMENT LLC, and GRINBERG MANAGEMENT & DEVELOPMENT LLC

Defendants.

---X

INDEX NO. 153947/2019

MOTION DATE 10/16/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, Plaintiff's motion for summary judgment on the issue of liability against Defendant Grinberg Management & Development LLC ("Grinberg") is granted.

Plaintiff is a paraplegic who uses a motorized wheelchair to move. On April 26, 2018, Plaintiff was driving his wheelchair down Holland Avenue in Staten Island when his wheelchair hit a bump on a raised sidewalk in front of 60 Holland Avenue (the "Premises"). Plaintiff heard a crack, stopped his wheelchair, and checked to make sure he was okay. Plaintiff realized the bump caused his left leg to come off the wheelchair's leg rest, and he saw his leg spasming. Plaintiff later learned he broke his leg.

Grinberg owns Premises. According to Daniel Vera[1], a Grinberg employee responsible for inspecting and maintaining, Grinberg would inspect the Premises monthly to ensure there are no trip hazards. Mr. Vera testified that Grinberg employees were to check "the sidewalk in front of

[1] Mr. Vera did not become employed by Grinberg until 2019. Mr. Vera's predecessors, individuals named "Xavier" and "John" were employed at the time of Plaintiff's accident, but Xavier and John are no longer employed by Grinberg.

the house" to "make sure everything is level." Mr. Vera testified since he began employment with Grinberg in 2019, he has not seen any issues with respect to the sidewalk in front of the Premises.

Plaintiff now moves for summary judgment on the issue of liability. Plaintiff argues that due to the nature of the defect, the raised sidewalk existed for so long that constructive notice could be charged to Grinberg. Moreover, Plaintiff argues that Grinberg's own witnesses, including Vera and its property manager, Dmitry Simanovsky, both admitted the raised sidewalk flag constitutes a tripping hazard. Plaintiff also proffers the expert affirmation of Vincent Pici, P.E. According to Mr. Pici, who reviewed Google Street View historical images of the sidewalk in front of the Premises, the raised sidewalk has existed since at least August of 2012 and should have been identified and remedied as part of any reasonable inspection. Mr. Pici also opined that the height differential and the dangerously large expansion joint both violated the New York City Administrative code. In opposition, Defendants rely only on their attorney's affirmation to argue that Plaintiff is the sole proximate cause of his injuries because he failed to include any foot straps or side barriers on his motorized wheelchair's footrest. Defendants also argue that the condition was open, obvious, and not inherently dangerous.

Plaintiff's motion is granted. Plaintiff met his prima facie burden of establishing a violation of New York City Administrative Code §§ 7-210 and 19-152 through his unrefuted testimony that he was injured after his leg fell out of his motorized wheelchair's leg rest when the motorized wheelchair rode over an uneven sidewalk raised approximately one and a half inches, and with an expansion joint at least 2 inches in width (*see Volquez v Bronx 2120 Crotona Avenue, L.P.*, 235 AD3d 566, 567 [1st Dept 2025]). Moreover, it is undisputed that Grinberg, as owner of the Premises, owed Plaintiff and all other pedestrians a duty to maintain the sidewalk in a reasonably safe condition. However, photographic evidence shows the defective condition in the sidewalk

remained unremedied for years even though Grinberg's employees testified it was their routine to visit the Premises at least once a month (*see, e.g. Richard v 1550 Realty LLC*, 228 AD3d 494 [1st Dept 2024] citing *Tropper v Henry Street Settlement*, 190 AD3d 623 [1st Dept 2021]). The burden now shifts to Defendants to submit admissible evidence sufficient to raise a triable issue of fact with respect to Grinberg's liability.

However, Defendants' opposition is lacking and contains no evidence, relying solely on an attorney affirmation.[2] Notably, Defendants do not offer any expert testimony refuting Mr. Pici's opinion. Defendants' argument as to the "open and obvious" condition of the defect does not preclude a finding that Grinberg, as the owner, is liable for Plaintiff's injuries. Whether a defect is "open and obvious" only relieves the property owner of its duty to warn, it does not relieve the property owner of the duty to ensure the premises is maintained in a reasonably safe condition (*see Martinez v Contreras*, 216 AD3d 532, 533 [1st Dept 2023]). Grinberg's argument that Plaintiff was the sole proximate cause of his accident is without merit Plaintiff established a *prima facie* showing that a statutory violation proximately caused his injuries (*see, e.g. Quiroz v Memorial Hospital for Cancer and Allied Diseases*, 202 AD3d 601 [1st Dept 2022] [conceptually impossible for a statutory violation, which serves as a proximate cause for a plaintiff's injury, to occupy the same ground as plaintiff's sole proximate cause for the injury]).

In any event, whether Plaintiff could have taken a safer route (he claims he was forced to take this route because a car was blocking his preferred route), whether he should have seen and avoided the raised portion of the sidewalk, or whether Plaintiff should have equipped his motorized wheelchair with leg straps, amounts to at most comparative negligence. However, it is well

---

[2] The sole exhibit included are excerpts of medical records. However, the medical records are not certified and the patient narrative notes within them are hearsay (*see Mosqueda v Ariston Development Group*, 155 AD3d 504 [1st Dept 2017]).

established that a plaintiff's comparative negligence does not bar summary judgment on the issue of liability when a tortfeasor's negligence has been established (*see Rodriguez v City of New York*, 31 NY3d 312 [2018]). Therefore, Plaintiff's motion is granted. The Court has considered the remainder of Defendants' contentions and finds them to be unavailing.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on the issue of liability against Defendant Grinberg Management & Development LLC is granted; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/27/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

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