

Walker v City of New York
2026 NY Slip Op 31948(U)
May 1, 2026
Supreme Court, New York County
Docket Number: Index No. 151766/2021
Judge: Ilana J. Marcus
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

In opposition, plaintiff submits an expert affidavit opining that a 2003 Big Apple Map survey of the subject location identifies a hole or hazardous depression in the crosswalk corresponding to the defect depicted in plaintiff's photographs (*see* NYSCEF Doc No. 43). Plaintiff further contends that the defect was longstanding and therefore, an issue of fact concerning prior written notice remains.

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]; *see also 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]).

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. The prior written notice requirement applies to any defect alleged in the crosswalk. 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]; *see also Belmonte v Metropolitan Life Ins. Co.*, 304 AD2d 471 [1st Dept 2003]).

Absent such notice, liability may only be imposed where the municipality affirmatively created the defect through work that immediately resulted in a dangerous condition (*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.*; *see also 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 the affirmative-negligence exception (*see Cardona v City of New York*, 305 AD2d 303 [1st Dept 2003]).

Here, the City made a prima facie showing that it did not receive prior written notice of the alleged defect. The City's submissions, including DOT, Parks records and the Big Apple Map, establish that there was no indicated defect or hazardous condition at the subject location. Further, the City establishes that permits here do not constitute prior written notice (*see Bolanos v City of New York*, 29 AD3d 455, 456 [1st Dept 2006]) and the inspections performed did not reveal defects. This evidence is sufficient to show the absence of prior written notice as a matter of law.

In opposition, plaintiff fails to raise a triable issue of fact. Plaintiff submits a Big Apple Map from 2003 and an affidavit of map analyst, Ryan Williams (*see* NYSCEF Doc Nos. 43). In his affidavit, Mr. Williams states that a pothole on the subject crosswalk was recorded on the 2003 Big Apple Map. Based on his study of the map and photos of the crosswalk, Mr. Williams asserts that the pothole recorded on the map is the same pothole that plaintiff specified caused his fall. However, the map plaintiff submits does not depict a pothole in the same location that plaintiff identified. In his complaint and during his GML §50-h hearing, plaintiff stated that he fell while crossing over 124th Street on "the east side of Madison Avenue" (*see* NYSCEF Doc No. 1, complaint; *see also* NYSCEF Doc No. 30, 50-h transcript at 11, 12). Instead, the pothole Mr. Williams identifies in the Big Apple Map is located on the west side of Madison Avenue. Notice of a similar or nearby defect and not of the specific alleged defect, does not constitute notice (*see D'Onofrio*, 11 NY3d at 585; *see also Belmonte*, 304 AD2d at 474). Mr. Williams' affidavit lacks foundation and appears conclusory. Such conclusory assertions cannot defeat summary judgment (*Amaya v Denihan Ownership Co., LLC*, 30 AD3d 327 [1st Dept 2006]).


Furthermore, plaintiff's reliance on the City's nondelegable duty to maintain its roadways does not overcome the statutory requirement of prior written notice, which remains a condition precedent to liability (*see Katz v City of New York*, 87 NY2d 241 [1995]).

Plaintiff also fails to raise a triable issue as to whether the City created the defect. Plaintiff speculates that prior sewer work that the Department of Environmental Protection (DEP) performed in 2019 “could have” caused or exacerbated the alleged defect. However, the City argues that the DEP’s work in the vicinity involved a separate sewer-related condition on 124th Street between Madison and Park Avenues, and was not at the alleged accident site. Plaintiff fails to offer competent evidence linking that work to the alleged pothole. Plaintiff’s purely speculative assertions are insufficient to establish the affirmative negligence exception (*see Civic v City of New York*, 215 AD3d 445, 446 [1st Dept 2023]).

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.

5/1/2026			
DATE			ILANÁ J. MARCUS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE