

Nunez v City of New York
2026 NY Slip Op 32019(U)
May 11, 2026
Supreme Court, New York County
Docket Number: Index No. 161421/2024
Judge: Richard Tsai
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD A. TSAI PART 21

Justice

-----X

MIRTHA NUNEZ,
Plaintiff,
- v -

INDEX NO. 161421/2024

MOTION DATE 01/12/2026, 03/30/2026

MOTION SEQ. NO. 006 007

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY LODGE OF THE ANCIENT AND MYSTICAL ORDER ROSAE CRUCIS, INC., THE GRAND LODGE OF THE ENGLISH LANGUAGE JURISDICTION OF THE ANCIENT AND MYSTICAL ORDER ROSAE CRUCIS, BUILDING EQUITY MANAGEMENT LLC., OTHENTIC LUXURY HAIR, LLC, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and HARLEM PROPERTY MANAGEMENT, INC.,

Defendants.

DECISION + ORDER ON MOTION

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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
Third-Party Plaintiff,

Third-Party
Index No. 595318/2026

-against-

C.A.C. INDUSTRIES INC.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 006) 79- 84 were read on this motion to/for JUDGMENT – SUMMARY.

The following e-filed documents, listed by NYSCEF document numbers (Motion 007) 112-121, 129 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, it is ORDERED that plaintiff's motion for leave to amend to add C.AC. Industries, Inc. as a direct defendant (Seq. No. 007) is GRANTED without opposition; and it is further

ORDERED that the supplemental summons and proposed amended verified complaint annexed to the papers as Exhibit G (NYSCEF Doc. No. 120) are deemed served upon all parties who have appeared in this action, upon service of a copy of this order with notice of entry; and it is further

ORDERED that the third-party claims against C.A.C. Industries, Inc. are converted to cross-claims; and its further

ORDERED that the defendants who have appeared in this action, shall each serve a verified answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that defendants New York City Transit Authority and Metropolitan Transportation Authority’s motion for summary judgment dismissing the action as against them (Seq. No. 006) is **GRANTED** without opposition, and the complaint is dismissed as against these defendants, with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, and all cross-claims by and against these defendants are dismissed; and it is further

ORDERED that the action is severed as to the other defendants and shall continue; and it is further

ORDERED that the caption is amended to read as follows:

MIRTHA NUNEZ,
PLAINTIFF,

AGAINST

THE CITY OF NEW YORK, NEW YORK CITY
LODGE OF THE ANCIENT AND MYSTICAL
ORDER ROSAE CRUCIS, INC., THE GRAND
LODGE OF THE ENGLISH LANGUAGE
JURISDICTION OF THE ANCIENT AND
MYSTICAL ORDER ROSAE CRUCIS,
BUILDING EQUITY MANAGEMENT LLC.,
OAUTHENTIC LUXURY HAIR,
LLC, CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC., HARLEM PROPERTY
MANAGEMENT, INC., and C.A.C. INDUSTRIES,
INC.,

DEFENDANTS.

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/suptctmanh/Efil-protocol.pdf>);¹ and it is further

ORDERED that this case is referred to the General Clerk's Office for reassignment to a City Part, and the status conference in Part 21 on May 14, 2026 at 10:30 a.m. is **canceled**.

Seq 007: Plaintiff's motion for leave to amend to name C.A.C. Industries, Inc. as a direct defendant

Plaintiff's motion for leave to amend the complaint to name C.A.C. Industries, Inc. as a direct defendant is granted without opposition, in the absence of any surprise or prejudice. C.A.C. Industries is already named as third-party defendant.

Seq 006: Defendants New York City Transit Authority and Metropolitan Transportation Authority's motion for summary judgment.

"To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party" (*Nellenback v Madison County*, 44 NY3d 329, 334 [2025] [internal citations omitted]).

¹ Pursuant to Section J, service upon the Clerk of the General Clerk's Office is done by posting to NYSCEF a copy of the order, with notice of entry (if required by the court), "using the **NYSCEF document type 'Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order'**" and the filer must provide "as additional information (in the 'Additional Document Information' field) a brief description of the type of order being submitted (e.g., 'Order of Consolidation' . . .) (emphasis added).

Plaintiff's counsel must select the correct document type to ensure that the order will be delivered electronically to the General Clerk's To-Do list.

Likewise, pursuant Section J, in order for the County Clerk to effectuate this order, plaintiff's counsel must serve a copy of this order on the County Clerk "by filing with NYSCEF a completed **Notice to the County Clerk - CPLR § 8019 (c) (NYSCEF Form EF-22, available on the NYSCEF site)**" (*id.*)

Although plaintiff did not oppose this motion for summary judgment, “[a] summary judgment motion should not be granted merely because the party against whom judgment is sought failed to submit papers in opposition to the motion (i.e., ‘defaulted’)” (*Liberty Taxi Mgt., Inc. v Gincheran*, 32 AD3d 276, 277 n * [1st Dept 2006]).

According to the notice of claim, on May 29, 2024, at approximately 8:00 p.m., plaintiff tripped and fell on the sidewalk by a bus stop located at or near the front of 2305 Adam Clayton Powell Boulevard (see Exhibit A in support of motion, notice of claim [NYSCEF Doc. No. 81]). At her statutory hearing, plaintiff did not testify that she either was waiting to board a bus, or was alighting from a bus (see Exhibit B in support of motion [NYSCEF Doc. No. 82]).

Defendants New York City Transit Authority and Metropolitan Transportation Authority (collectively, the Transit Defendants) are granted summary judgment dismissing the action as against them.

“Under Administrative Code of City of N.Y. § 7–210, an abutting property owner has a duty to maintain the public sidewalk, but the City continues to be responsible for maintaining any part of the sidewalk that is ‘within a designated bus stop location’” (*McCormick v City of New York*, 165 AD3d 565, 565 [1st Dept 2018]). “A bus stop is not delimited to the roadway where buses operate but includes the sidewalk where passengers board and disembark from the bus” (*Bednark v City of New York*, 127 AD3d 403, 404 [1st Dept 2015]).

Under either scenario, the Transit Defendants are not responsible for maintaining and repairing the area where plaintiff allegedly tripped and fell. The Transit Defendants demonstrated that they are not the owners of the property at or near that address, based on the affidavit of Heriberto Hernandez (see Hernandez aff ¶¶ 4-6 [NYSCEF Doc. No. 83]).

Because plaintiff did not claim that she was boarding or alighting from a bus, the Transit Defendants’ duty as a common carrier, if any, to provide a safe place to board or alight from a bus is not implicated based on these facts (see *Blye v Manhattan & Bronx Surface Transit Operating Authority* (124 AD2d 106 [1st Dept 1987], *affd* 72 NY2d 888 [1988]).

The Transit Defendants’ motion for summary judgment dismissing the complaint as against them is therefore granted.

Because the Transit Defendants can no longer be held liable to plaintiff, the cross-claims against them that sound in common-law indemnification and contribution are dismissed by operation of law (see *Stone v Williams*, 64 NY2d 639, 642 [1984] [the conclusion that a defendant is not liable to plaintiff necessarily defeats the cross-claims for indemnification and contribution asserted by co-defendants]; see e.g. *Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the

dismissal of the complaint in its entirety as against a defendant, the cross-claims against that defendant are also dismissed]).

Likewise, the Transit Defendants' own cross-claims for common-law indemnification and contribution against the other co-defendants are dismissed as academic (*Rogers v Rockefeller Group Intl., Inc.*, 38 AD3d 747, 750 [2d Dept 2007]).

The caption is amended to reflect not only the amended of the complaint to add C.A.C. Industries, Inc. as a direct defendant, but also the dismissal of the complaint as against the Transit Defendants.

Finally, this personal injury action is referred to the General Clerk's Office for reassignment to a City Part, as Corporation Counsel represents defendant City of New York.

ENTER:



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5/11/2026

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

SEQ. NO. 006

SEQ. NO. 007

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

DENIED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE