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# Sidewalk Update: New York City Administrative Code §7-210

This article takes look at several cases which address the issue of liability for sidewalk maintenance. The authors conclude that "the purpose underlying the enactment of the exemption in New York City Administrative Code §7-210 is to promote the safety of pedestrians making use of public walkways. Imposing a duty upon owners of real property to maintain the sidewalk abutting their property incentivizes the maintenance of sidewalks and creates safer walkways for pedestrians."

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New York City Administrative Code §7-210 imposes a duty upon owners of real property to maintain the sidewalk abutting their property in a reasonably safe condition and provides that owners are liable for personal injuries that are proximately caused by such failure. Section 7-210 specifically provides an exemption for one, two, or three-family buildings used exclusively for residential purposes.

## Non-Delegable Duty

In *Xiang Fu He v. Troon Mgmt.*, 34 N.Y.3d 167 (2019), the New York Court of Appeals held that §7-210 imposes an affirmative, nondelegable obligation on a landowner to maintain reasonably safe sidewalks.

Prior to *He*, landlords, especially absentee landlords, argued that the duty to maintain the sidewalks could be delegated to their tenants. In *He*, the defendant leased the premises abutting the sidewalk to a tenant. The lease required the tenant to clean and maintain the sidewalk and included a clause to indemnify the landlord if there were an accident. The court found that regardless of the terms of the lease, the primary statutory legal obligation is owed by the landlord to the public.

The court's holding is not limited to the conditions that caused the plaintiff to fall, i.e., snow and ice, but extends to sidewalk flags as well. The court recognized that under the current law, landowners had no incentive to ensure that a delegatee was competent and properly insured. The *He* decision incentivizes owners to "optimize the safety and proper care of sidewalks," as well as reduce harm and litigation costs to third parties. *He* places the duty "on the shoulders of those in the best position to maintain sidewalks in a reasonably safe condition and to insure against loss." Id. at 174-75.

Landowners can still delegate their sidewalk maintenance duties to tenants, however, the primary duty to the public to keep sidewalks clear and clean rests with the landowner, regardless of the terms of a lease or other contract.

## Location of the Defect

While §7-210(a) imposes a duty to maintain the sidewalk *abutting* an owner's property in a reasonably safe condition, it does not foreclose the possibility that a neighboring property owner may be subject to liability for failing to maintain its own abutting sidewalk in a reasonably safe condition. See *Sangaray v. West River Assoc.*, 26 N.Y.2d 3d 793 (2016).

In *Sangaray*, the plaintiff tripped on an expansion joint located between the Mercedo and West River property. Most of the sunken sidewalk square that plaintiff traversed prior to his trip and fall abutted the West River property. West River moved for summary judgment on the grounds that the area where plaintiff tripped was located entirely in front of the Mercedo property. The court denied the defendant's motion and held that §7-210 does not restrict a landowner's liability to accidents that occur on its own abutting sidewalk.

The court reasoned that factors, such as the nature of the defect and whether it abutted property, are significant but do not foreclose the possibility that a neighboring property may also be subject to liability. The court held that the West River defendants were subject to liability for failing to maintain their own abutting sidewalk in a reasonably safe condition where it appeared that such failure, coupled with the neighboring property owner's negligence, constituted a proximate cause of the accident.

## Defective Curbstones

According to §7-210, the sidewalk includes the intersection quadrant for corner property. While §7-210 does not define what a sidewalk is, New York Administrative Code §19-101(d) defines a sidewalk as a portion of a street between curb lines, or lateral lines of a roadway. This definition does not include the *curb* itself. Case law has consistently held that the curb is the responsibility of the City. In *Brown v. New York City Dep't of Transportation*, 187 A.D.3d 535 (1st Dept. 2020), the plaintiff commenced an action after tripping on a curb and injuring his ankle in front of the premises owned by the defendant. While getting off of a bus, the plaintiff stepped into a sixteen-inch deep gap between a metal curb and the adjacent sidewalk.

The First Department granted the defendant's motion for summary judgment after reviewing photographs of the area where the plaintiff fell. Despite finding that the defendant routinely removed garbage from the curb area, the court found that there was no question of fact as to whether the defendant assumed an obligation

to maintain or repair the defective condition. The evidence clearly showed that the area where the plaintiff fell was a curb, and as such, it was held to be the responsibility of the City.

The plaintiff in *Rios v. City of New York*, 199 A.D.3d 478 (1st Dept. 2021), tripped on a height differential between two portions of a metal curb on the sidewalk. The plaintiff described the curb as broken, bumpy, cracked, rutted, raised, and depressed. A photograph submitted by the plaintiff depicts an uneven joint between two metal curbs, creating a one to two-inch lip.

While the City of New York may be held liable for dangerous conditions resulting from curbs, owners may be liable for dangerous conditions found on the sidewalk. The plaintiff in *Rios* testified at her 50-h hearing that the height differential between two portions of the metal curb caused the accident. Neither the notice of claim, complaint, or the bill of particulars alleged that the sidewalk was improperly leveled. Instead, the plaintiff alleged in those documents that the *metal curb* caused the accident.

In the plaintiff's opposition to the owner's motion, she averred for the first time that she tripped as a result of the height differential between the *curb and sidewalk*. The First Department found that the plaintiff tailored her account to avoid the consequences of her 50-h testimony, and was thus insufficient to raise an issue of fact. Summary judgment was granted to the defendant whose property abutted the sidewalk.

## Tree Wells

While §7-210 imposes tort liability on property owners who fail to maintain city-owned sidewalks in a reasonably safe condition, it does not impose civil liability on property owners for injuries that occur in city-owned tree wells.

In *Farrell v. 225 Parkside*, 173 A.D.3d 1138 (2d Dept. 2019), the plaintiff tripped and fell in a tree well abutting the sidewalk adjacent to her apartment building. The Second Department granted the owner summary judgment holding that an owner's duty does not expand to maintenance of city-owned tree wells.

In *Chulpayeva v. 109-01 Realty Co.*, 170 A.D.3d 798 (2d Dept. 2019), the plaintiff claimed that her path on the sidewalk was obstructed by scaffolding erected for construction on the defendant's property. The plaintiff further alleged that the scaffolding diverted her path to an area of uneven bricks at the edge of a sidewalk and the city-owned tree well where she tripped and fell.

The Second Department held that even if the scaffolding erected on the sidewalk narrowed the usual portion of the sidewalk, the narrowing was not the proximate cause of the accident. The court reasoned that the narrowed sidewalk merely furnished the condition or occasion for the occurrence of the accident. It was noted that the plaintiff stepped into the tree well to allow a woman pushing a man in a wheelchair to pass. Under the Administrative Code, the placement of the scaffolding did not block passage on the sidewalk or otherwise compel the plaintiff to step into the tree well in order to allow the woman pushing the man in the wheelchair to pass by. Summary judgment was granted to both the scaffolding company and the landowner.

## Tree Roots

In *Dragonetti v. 301 Marine Ave.*, 180 A.D.3d 870 (2d Dept. 2020), the plaintiff tripped and fell on an uneven condition in a sidewalk abutting a building caused by tree roots that had crept under the sidewalk and raised the slabs unevenly. Plaintiff sued the owner of the building and the city of New York.

The Second Department granted summary judgment to the city. The court noted that while Administrative Code 7-210 shifts tort liability to an abutting landowner, it "does not shift tort liability for injuries proximately caused by the city's *affirmative* acts of negligence" (emphasis added and citations omitted). The court found that even assuming that the defendants were responsible for the maintenance of the tree, and that the roots

from the tree caused the alleged defect, the defendants' alleged failure to maintain the roots would at most constitute nonfeasance and not negligence. The city defendants established that Administrative Code §7-210 did not apply as they did not affirmatively cause or create the sidewalk defect.

## Protruding Objects

The plaintiff in *Vullo v. Hillman House.*, 173 A.D.3d 600 (1st Dept. 2019), brought a negligence action against the owner of a building after tripping on a metal signpost stump that protruded above the sidewalk. Prior to the accident, the owner had hired a contractor to re-level the sidewalk. Although the general rule is that a party who retains an independent contractor is not liable for the contractor's negligent acts, an exception arises when the hiring party is charged with a nondelegable duty. The property owner had a nondelegable duty to maintain the sidewalk, including the sidewalk around the subject signpost stump.

The court found that under these circumstances, the work performed by the contractor may have exacerbated the hazardous tripping condition. The court concluded that factual issues precluded the owner's motion for summary judgment.

## Conclusion

The purpose underlying the enactment of the exemption in New York City Administrative Code §7-210 is to promote the safety of pedestrians making use of public walkways. Imposing a duty upon owners of real property to maintain the sidewalk abutting their property incentivizes the maintenance of sidewalks and creates safer walkways for pedestrians. *Xiang Fu He*, 34 N.Y.3d at 174. Section 7-210 places liability on those who are in the most effective position to remedy sidewalk defects.

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