

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CARLOS RODRIGUEZ,

Plaintiff,

- against -

NEBOJSA MILJKOVIC and the  
CITY OF NEW YORK,

Defendants.  
-----X

DEARIE, District Judge.

Plaintiff Carlos Rodriguez brings this personal injury action against the City of New York (“City”) and Nebojsa Miljkovic (“Miljkovic”) as a result of an automobile accident that occurred on June 13, 1996. Defendant City moves for summary judgment. The motion is denied.

**BACKGROUND**

Plaintiff was driving his 1996 Suzuki motorcycle on Grand Avenue in Queens County, New York. See Carlos Rodriguez Depo. at 27-33. Defendant Miljkovic was driving his 1988 Chrysler in the opposite direction. Id. Miljkovic made a U-turn into plaintiff’s traffic lane. Id. at 27-29. Plaintiff’s motorcycle struck Miljkovic’s vehicle. Id. As a result of the collision, plaintiff alleges a claim for five million (\$5,000,000) dollars in damages. See Complaint ¶ 22.

Plaintiff contends that the painted double-yellow line in the center of Grand Avenue was completely worn away on the date of the accident and was not visible to Miljkovic when he crossed it making his U-turn. See Joel L. Levine Declaration ¶ 5. Plaintiff claims that the City

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**MEMORANDUM & ORDER**

was negligent in maintaining this line and the City's negligence is a proximate cause of plaintiff's injuries. Id.

The City argues that, pursuant to § 7-201(c)(2) of the Administrative Code of the City of New York ("Administrative Code"), it cannot be held liable for damages resulting from a defect in a road unless prior written notice of the defect was given to the City. Alternatively, City argues that its alleged negligence is not a proximate cause of the accident.

### **DISCUSSION**

Section 7-201(c)(2) of the Administrative Code provides that "[n]o civil action shall be maintained against the City for damage to property or injury to person or death sustained in consequence of any street, highway, bridge . . . being out of repair, unsafe, dangerous or obstructed, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition" was provided to the City. Id. Pursuant to this statute, a plaintiff cannot maintain a personal injury action against the City arising out of a defective or unsafe condition in a sidewalk or roadway if the City was not provided with written notice of the condition before the accident occurred. See Acevedo v. City of New York, 512 N.Y.S.2d 414, 415 (App. Div. 1987).

However, the New York Court of Appeals has "emphasized that prior written notice statutes should be strictly construed and refer to physical conditions in the streets or sidewalks . . . which do not immediately come to the attention" of City officials unless they are given actual notice of such conditions. See Monteleone v. Village of Floral Park, 549 N.E.2d 459, 460 (N.Y. 1989) (quotations omitted) (citing Doremus v. Village of Lynbrook, 222 N.E.2d 376, 378 (N.Y. 1966)). Roadway defects such as broken or missing traffic signals are not defective conditions

“within the meaning of the prior notice statutes.” Id. Instead, “prior-notice laws refer to physical defects such as holes and cracks” in a sidewalk or roadway. Alexander v. Eldred, 472 N.E.2d 996, 999 (N.Y. 1984).

Plaintiff contends that the faded double yellow line at issue in this case is not a defective condition within the meaning of § 7-201(c)(2). See Plaintiff’s Memo. at 3. No case addresses whether faded street markings are among those defective conditions that require prior written notice. Cf. Haskell v. Chautauqua County, 590 N.Y.S.2d 637 (App. Div. 1992). Nevertheless, the Court finds that the faded double-yellow line at issue in this case is not covered by the City’s notice statute.

Section 7-201(c)(2) exempts the City from liability for physical conditions that arise in streets or sidewalks that do not immediately come to the attention of City officials. In plaintiff’s case, the defect is one that developed over time, suggesting an extended period of neglect of a road marking created by the City to direct motorists to follow certain traffic rules. In this regard, the faded double-yellow line is akin to traffic signals and street signs that become defective over time. The New York Court of Appeals has consistently held that such traffic indicators are not the subject of prior notice statutes. See Alexander, 472 N.E.2d at 999 (“It is well-settled” that prior notice laws do not pertain to “the failure to maintain or erect traffic signs.”). Prior notice statutes address “actual physical defects in the surface” of a roadway or sidewalk and “should not be stretched to cover” other defective conditions such as the faded street markings at issue here. See Doremus, 222 N.E.2d at 365-66.

Alternatively, City argues that even if it had prior notice that the double-yellow line had faded, and it was negligent in maintaining that line, City’s negligence was not a proximate cause

of plaintiff's injuries. City argues that defendant Miljkovic's alleged negligence in making the U-turn and plaintiff's alleged contributory negligence caused the accident, and a well-maintained, visible double-yellow line would not have altered defendant Miljkovic's nor plaintiff's actions in any meaningful way. See Defendant's Memo. at 2.

In a personal injury action, "it is for the finder of fact to determine legal cause, once the court has been satisfied that a prima facie case has been established." Derdiarian v. Felix Contracting Corp., 414 N.E.2d 666, 670 (N.Y. 1980) (citations omitted). "To carry the burden of proving a prima facie case, the plaintiff must generally show that the defendant's negligence was a substantial cause of the events which produced the injury." Id. (citing Nallan v. Helmsley-Spear, Inc., 407 N.E.2d 451, 459 (N.Y. 1980)). Plaintiff, however, is not required to demonstrate that the precise manner in which the accident occurred was foreseeable. See Restatement (Second) of Torts § 435 (1965); see also Parvi v. City of Kingston, 362 N.E.2d 960, 965 (N.Y. 1977).

In Derdiarian v. Felix Contracting Corp., the driver of an automobile had an epileptic seizure and crashed into an employee working at a construction site. The court found that the finder of fact could conclude "that the foreseeable, normal and natural result of the risk created by [defendant] was the injury of a worker by a car entering the improperly protected work area." Id. at 671. The intervening act of the automobile driver could not "serve as a superseding cause, and relieve [defendant] of responsibility, where the risk of the intervening act occurring is the very same risk which renders [defendant] negligent." Id.

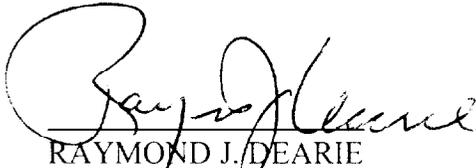
Here, the City's alleged negligence in maintaining the double-yellow line may be found by a reasonable fact-finder to be a proximate cause of plaintiff's injuries. The purpose of a

double-yellow line is to prevent drivers from crossing the center of a road and causing an accident with an approaching vehicle. See Mariano Scott Depo. at 34-35. A fact-finder could reasonably conclude that as a result of City's negligence in maintaining the double-yellow line an automobile would cross the center of the road and cause an accident. Defendant Miljkovic stated in his deposition that at the time he made the U-turn he thought he was making a legal turn and would have thought differently had the line been present. See Nebojsa Miljkovic Depo. at 34-35. As in Deridian, "[t]hat the driver was negligent, or even reckless, does not insulate [defendant] from liability." Id. at 671. It cannot be said, as a matter of law, that defendant Miljkovic's alleged negligence nor plaintiff's alleged contributory negligence are intervening acts that relieve defendant City of liability for plaintiff's injuries.

For the reasons stated above, defendant's motion for summary judgment is denied.

SO ORDERED.

Dated: Brooklyn, New York  
August 6, 1998

  
RAYMOND J. DEARIE  
United States District Judge