

**NEW YORK CITY ADMINISTRATIVE CODE § 7-210 DOES NOT APPLY TO INJURIES RESULTING FROM A DEFECTIVE CURB CONDITION AND REMAIN THE RESPONSIBILITY OF THE CITY OF NEW YORK**

CITY'S summary judgment motion based on NYCAC § 7-210 should be denied because it does not protect the CITY from lawsuits arising from injuries that were caused due to defective curb conditions. CITY'S moving papers quote NYCAC § 7-210 in its entirety. See; ¶ "9" of CITY'S moving papers. NYCAC § 7-210 expressly refers to "sidewalk flags" and in no way mentions curbs or curbstones.

The case of *Irizarry v. The Rose Bloch 107 University Place Partnership* is directly on point. 12 Misc3d 733 [Sup Ct, Kings County 2006]. In *Irizarry* the plaintiff testified at her deposition that "she stepped up onto the curbstone, her foot twisted and she fell to the sidewalk." Based on the plain language of NYCAC § 7-210 the Court held that the section was inapplicable because "the accident occurred on a defective curbstone." *Irizarry*, 12 Misc3d at 739. Annexed hereto as **Exhibit "E"** is a copy of the Court's decision in *Irizarry v. The Rose Bloch 107 University Place Partnership*, 12 Misc3d 733 [Sup Ct, Kings County 2006].

Justice Schmidt further stated that NYCAC § 19-101 defines "Sidewalk" as the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, *but not including the curb*, intended for the use of pedestrians." (emphasis added.) See; **Exhibit "F"** annexed hereto. As such the *Irizarry* Court held that "*curbstones remain the responsibility of the City of New York and not the*

*responsibility of the abutting property owner.” Irizarry, 12 Misc3d at 737. (emphasis added.)*

Justice Schmidt’s reasoning in *Irizarry* was that “it was clear that ‘curbstones’ were part of the definition of ‘street,’ and specifically governed by NYCAC § 7-201 ... Specifically, section 7-201(c)(1)(a) provides that [t]he term street *shall include the curbstone*, an avenue, underpass, road alley, lane, boulevard, concourse, parkway, road or path within a park, park approach, driveway, thoroughfare, public way, public square, public place, and public parking area.”<sup>1</sup> (emphasis in original.) *Irizarry, 12 Misc3d at 737.* Annexed hereto as **Exhibit “G”** is a copy of NYCAC § 7-201.

The recent Court of Appeals decision in *Vucetovic v. Epsom Downs, Inc.*, 10 NY3d 517 [2008] is also instructive. In *Vucetovic* the Plaintiff brought suit against a private property owner for injuries he sustained when he tripped on a cobblestone surrounding the dirt area containing a tree stump. The Supreme Court granted the defendant summary judgment, which was affirmed by the First Department, holding that a tree well is not part of the “sidewalk” for purposes of section NYCAC § 7-210 which imposes tort liability on property owners who fail to maintain city-owned sidewalks in a reasonably safe condition. Annexed hereto as

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<sup>1</sup> The Court of Appeals recently agreed with Justice Schmidt’s reasoning in *Vucetovic v. Epsom Downs, Inc.*, 10 NY3d 517 [2008] where they held that NYCAC § 7-210 “mirrors the duties and obligations of property owners with regard to sidewalks set forth in NYCAC § 19-152. Justice Schmidt reasoned that a review of the legislation Bill Jacket demonstrates that NYCAC § 7-210 was intended to “mirror the duties and obligations, *inter alia*, to repair, repave and maintain the sidewalks, as set forth in NYCAC § 19-152 of the Administrative Code...expressly refers to ‘sidewalk flags,’ while curbstones are not mentioned.” *Irizarry, 12 Misc3d at 737.*

**Exhibit “H”** is a true copy of the Court’s decision in *Vucetovic v. Epsom Downs, Inc.*, 10 NY3d 517 [2008].

The Court of Appeals affirmed, reasoning that “while § 7-210 employs the phrase “shall include, but not be limited to,” this clause applies to the types of maintenance work to be performed, *not the specific features of what constitutes a sidewalk*. The Court further held that “[g]iven the statutory silence and the absence of any discussion of tree wells in the legislative history, it seems evident that the City Council did not consider the issue of tree well liability when it drafted § 7-210. The Court specifically reasoned that “[i]f the City Council desired to shift liability for accidents involving tree wells exclusively to abutting landowners in derogation of the common law, it needed to use specific and clear language to accomplish this goal.” *Vucetovic*, 10 NY3d at 522. *See also; Garcia-Martinez v. The City of New York*, 20 Misc3d 1111(A) [Sup Ct, New York County 2008] (According to NYCAC § 19-101(d), the sidewalk does not include the curb and § 7-210 is inapplicable to anything not specifically mentioned in that code section.)

The instant matter is analogous to *Irizarry* and *Vucetovic*. As in *Irizarry*, here [REDACTED] testified that he sustained his injuries when he tripped over a defective condition on the curb located adjacent to 209 Lewis Avenue in Brooklyn, New York. Specifically, [REDACTED] [REDACTED] was asked the following questions and gave the following answers:

Q. Was it part of the sidewalk or part of the curb?

A. The curb.

Q. How big was the piece of metal?

A. I'm not sure, but - - I'm not sure how long it was.

Q. Was it more or less than a foot?

A. Well, I think it was more than a foot, because it was all along the curb.

(Page 21, lines 18-24.) [REDACTED] deposition transcript is attached hereto as Exhibit "I." Additionally, [REDACTED] emergency room records from May 17, 2005 state that he injured his left ankle while "stepping off curb" [sic]. See; Exhibit "A."

As in *Irizarry* and *Vucetovic*, because the curb is specifically excluded from NYCAC § 7-210 it is inapplicable to the instant matter. Further, NYCAC § 19-101 specifically defines a "Sidewalk" as "not including the curb." Thus, the CITY is not absolved of their liability for injuries occurring on defective curb conditions within the City of New York. Therefore, defendant CITY'S motion for summary judgment should be denied because NYCAC § 7-210 does not apply to the instant matter.