

# **Bond Case Briefs**

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## **LIABILITY - NEW YORK**

### **Chang v. City of New York**

**Supreme Court, Appellate Division, First Department, New York - August 4, 2016 - N.Y.S.3d - 2016 WL 4131815 - 2016 N.Y. Slip Op. 05728**

Motorist commenced action against municipality, alleging negligence because intersection lacked “stop here on red sign” and stop bar, and against companies responsible for maintenance of foliage in center median at intersection, alleging negligence in maintenance of foliage.

The Supreme Court, New York County, granted summary judgment for defendants. Motorist appealed.

The Supreme Court, Appellate Division, held that:

- Municipality breached its nondelegable duty to maintain roadway in safe condition;
- Factual issue existed as to whether motorist had all the notice of danger that a stop sign would have afforded and as to whether municipality’s failure to install required “stop here on red” signs at intersection was proximate cause of accident; and
- Companies responsible for maintenance of foliage were not proximate cause of motorist’s collision.

Installation of a traffic control signal, where it had not previously existed, is a discretionary governmental function that does not give rise to state liability; however, liability is imposed where there is a failure to properly maintain an already established traffic control and where that failure was a proximate cause of the accident.

Municipality breached its nondelegable duty to maintain roadway in safe condition by failing to reinstall previously established traffic control.

Genuine issues of material fact existed as to whether motorist had all notice of danger that stop sign would have afforded, and as to whether municipality’s failure to install required “stop here on red” signs at intersection was proximate cause of accident, even if motorist’s conduct also was negligent and proximate cause of accident, precluding summary judgment in motorist’s negligence action against municipality.

Companies responsible for maintenance of foliage in center median at subject intersection were not proximate cause of motorist’s collision at intersection even if foliage was overgrown, since motorist was able to see one block down avenue before he entered intersection.