IMMUNITY - NEW YORK

[Olenick v. City of New York](#)

Supreme Court, Kings County, New York - May 4, 2017 - N.Y.S.3d - 2017 WL 1743179 - 2017 N.Y. Slip Op. 27143

Cyclist brought action against city to recover for personal injuries allegedly sustained in a collision with a pedestrian on a bridge.

City moved for summary judgment and to dismiss.

The Supreme Court, Kings County, held that:

- City's development and implementation of plan to update bicycle and pedestrian path markings on bridge to increase visibility was a proprietary function;
- City was not entitled to qualified immunity; and
- Issue of material fact existed as to whether city's failure to conduct safety study contributed to collision.

City's development and implementation of plan to update bicycle and pedestrian path markings on bridge to increase visibility was a proprietary function analogous to roadway planning, design, and maintenance, precluding governmental function immunity in cyclist's negligence claim against city arising from collision with pedestrian.

City was not entitled to qualified immunity in negligence claim brought by cyclist to recover damages for injuries sustained during collision with pedestrian while in bike path on bridge based on its development of a plan to update bicycle and pedestrian path markings on bridge to increase visibility, where city had not conducted a study regarding avoidance of collisions between cyclists and pedestrians before creating the plan.

Genuine issue of material fact existed as to whether city's failure to conduct safety study of collisions between pedestrians and bicycles on bridge before developing plan to update bicycle and pedestrian path markings on bridge to increase visibility was proximate cause of cyclist's collision with pedestrian while he was biking in bike path on bridge, precluding summary judgment in favor of city in cyclist's negligence claim.