

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D57601  
T/afa

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Argued - September 20, 2018

REINALDO E. RIVERA, J.P.  
JOHN M. LEVENTHAL  
BETSY BARROS  
VALERIE BRATHWAITE NELSON, JJ.

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2016-06015  
2016-06018  
2016-06019

DECISION & ORDER

Ronny Booker, Sr., appellant, v New York City  
Housing Authority, et al., respondents, et al., defendant.

(Index No. 4479/15)

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Sacco & Fillas, LLP, Astoria, NY (Jeremy S. Ribakove of counsel), for appellant.

Gladstein, Keane & Flomenhaft, PLLC (Wilson Elser Moskowitz Edelman & Dicker  
LLP, New York, NY [Patrick J. Lawless], of counsel), for respondent New York City  
Housing Authority.

Miranda Sambursky Slone Sklarin Verveniotis, LLP, Mineola, NY (Ondine C. Slone  
of counsel), for respondent Bushwick United Head Start.

In an action to recover damages for personal injuries, the plaintiff appeals from three orders of the Supreme Court, Kings County (Lara J. Genovesi, J.), all dated April 22, 2016. The first order, insofar as appealed from, granted that branch of the motion of the defendant New York City Housing Authority which was for summary judgment dismissing the complaint insofar as asserted against it. The second order granted the motion of the defendant 93rd Street, LLC, for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. The third order, insofar as appealed from, granted that branch of the motion of the defendant Bushwick United Head Start which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the appeal from the second order is dismissed as abandoned; and it

December 12, 2018

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is further,

ORDERED that the first and third orders are affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendants New York City Housing Authority and Bushwick United Head Start.

The plaintiff allegedly was injured when he tripped over a cable protruding from a curbside tree well in front of 331 Central Avenue in Brooklyn (hereinafter the premises). Thereafter, the plaintiff commenced this action against, among others, the New York City Housing Authority (hereinafter NYCHA), which owned the premises, and two alleged lessees of the premises, Bushwick United Head Start (hereinafter Bushwick) and 93rd Street, LLC. NYCHA, Bushwick, and 93rd Street, LLC, separately moved for summary judgment dismissing the complaint and all cross claims insofar as asserted against each of them. In three orders, all dated April 22, 2016, the Supreme Court granted the motions.

NYCHA and Bushwick each established their prima facie entitlement to judgment as a matter of law by demonstrating that they had no duty to maintain the tree well, that they exercised no control over the tree well, and that they did not cause or create the alleged dangerous condition (*see Gibbons v City of New York*, 139 AD3d 1004, 1004-1005; *Leibowitz v 2555 E. 12<sup>th</sup> St. Corp.*, 128 AD3d 1023, 1024; *Morelli v Starbucks Corp.*, 107 AD3d 963, 965). In opposition, the plaintiff failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Additionally, the plaintiff's professed need to conduct discovery did not warrant denial of those motions since he already had personal knowledge of the relevant facts (*see Pierre v Demoura*, 148 AD3d 736, 737), and the mere hope or speculation that evidence may be uncovered during the discovery process is insufficient to deny summary judgment (*see Deerin v Ocean Rich Foods, LLC*, 158 AD3d 603, 606; *Le Grand v Silberstein*, 123 AD3d 773, 775). Accordingly, we agree with the Supreme Court's determination granting those branches of the separate motions of NYCHA and Bushwick which were for summary judgment dismissing the complaint insofar as asserted against each of them.

The appeal from the second order dated April 22, 2016, must be dismissed as abandoned as the plaintiff does not seek reversal of this order in his brief (*see Scheriff v Scheriff*, 152 AD3d 724, 725; *Sirma v Beach*, 59 AD3d 611, 614).

RIVERA, J.P., LEVENTHAL, BARROS and BRATHWAITE NELSON, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court