

Sadykova v City of New York

2007 NY Slip Op 30084(U)

February 15, 2007

Supreme Court, Queens County

Docket Number: 0000130

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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ROZA SADYKOVA,

Plaintiff(s),

- against -

Index
Number: 130/06

Motion
Date: 02/06/07

THE CITY OF NEW YORK, 99-01 QUEENS,
BOULEVARD LLC, KEYSpan ENERGY DELIVERY,
NYC INC., OUTDOOR SYSTEMS, INC., VIACOM
OUTDOOR INC., TRICE RESTORATION INC.,
LUCA ANTONELLI CONTRACTING and
CONSOLIDATED EDISON,

Motion
Cal. Number: 18
Motion Seq. No. 4

Defendant(s).

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The following papers numbered 1 to 10 read on this motion by defendants CBS Outdoor Inc., f/k/a Outdoor Systems Inc. (sued herein as Outdoor Systems, Inc.) and Viacom Outdoor Inc. for summary judgment dismissing the complaint and any cross-claims against said defendants.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 6
Affirmation in Opposition.....	7-8
Reply Affirmation.....	9-10

Upon the foregoing papers it is ordered that the motion is decided as follows:

This motion is being brought on behalf of CBS Outdoor Inc., Viacom Outdoor Inc. and Outdoor Systems Inc. The answer annexed to the motion indicates that it is interposed by CBS Outdoor Inc., f/k/a Outdoor Systems Inc. and Viacom Outdoor Inc. Since, according to its answer, Outdoor Systems Inc is now CBS Outdoor Inc, this Court deems this motion as being brought by CBS Outdoor Inc., f/k/a Outdoor Systems Inc. and Viacom Outdoor Inc.

Motion by defendants CBS Outdoor Inc., f/k/a Outdoor Systems Inc. (sued herein as Outdoor Systems, Inc.) and Viacom Outdoor Inc. for summary judgment on the issue of liability dismissing plaintiff's complaint and all cross-claims against it is denied.

Plaintiff allegedly sustained injuries as a result of tripping and falling upon a defective public sidewalk and/or curb at or near the northeast corner of Queens Boulevard and 99th Street in Queens County on October 7, 2004. Movants contend that they were not responsible for the sidewalk/curb at that location and did not perform, direct or control any work at that location and, therefore, the complaint and any cross-claims must be dismissed as against them.

In order to obtain summary judgment, movants must make a prima facie showing that they are entitled to said relief, by tendering evidentiary proof in admissible form sufficient to eliminate any material issues of fact (see Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851 [1985]; Zuckerman v. City of New York, 49 NY2d 557 [1980]). Movants have failed to sustain their burden.

An affidavit in support of a summary judgment motion must be by a person with personal knowledge of the facts (see CPLR 3212[b]; GTF Marketing Inc. v. Colonial Aluminum Sales Inc., 66 NY 2d 965 [1985]; Zuckerman v. City of New York, supra).

In his affidavit annexed to the motion, Glen Herskowitz, employed by CBS as Manager, Transit Media Development, avers that CBS is not responsible for the sidewalk at or near the northeast corner of Queens Boulevard and 99th Street and that it did not perform, direct or control any work on the sidewalk at that location. He further avers that CBS was responsible for a bus shelter one block away from the location at issue and concludes that neither CBS, Viacom nor Outdoor Systems is responsible for the alleged defect. Herskowitz fails to allege that he has personal knowledge of these facts. He fails to explain what his duties are as Manager of Transit Media Development. Moreover, he fails to explain how he, an employee of CBS, has knowledge concerning the responsibility of Viacom, a different entity. Therefore, this affidavit is of no probative value.

The photocopies of photographs annexed to the motion showing what appear to be close-ups of a broken portion of curb, in and of themselves, do not support the granting of summary judgment.

Since movants have failed to establish a prima facie entitlement to summary judgment, the Court need not consider the sufficiency of the opposing papers (see New York & Presbyt. Hosp. v. Allstate Ins. Co., 29 AD 3d 547 [2nd Dept 2006]).

Accordingly, the motion for summary judgment must be denied.

Dated: February 15, 2007

KEVIN J. KERRIGAN, J.S.C.