

Siantil v City of New York

2007 NY Slip Op 30091(U)

March 6, 2007

Supreme Court, Queens County

Docket Number: 0007833

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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BENITA SIANTIL, Index
Number: 7833/04

Plaintiff(s), Motion

- against - Date: 02/27/07

CITY OF NEW YORK and MEGA CONTRACTING, Motion
INC., Cal. Number: 20

Defendants. Motion Seq. No. 2

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The following papers numbered 1 to 12 read on this motion by defendant for summary judgment dismissing the complaint and any cross-claims or, in the alternative, for an order striking plaintiff's complaint and bill of particulars for failure of plaintiff to provide discovery.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 9
Reply Affirmation.....	10-12

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

Motion by defendant Mega Contracting for summary judgment on the issue of liability dismissing the complaint and any cross-claims against it is denied.

Plaintiff allegedly sustained injuries as a result of tripping and falling over a loose and unsecured piece of plastic construction netting that had entangled around her legs in front of the premises known as 40 Harrison Street in New York County on January 3, 2003.

In order to obtain summary judgment, movant must make a prima facie showing that it is entitled to said relief, by tendering sufficient proof to eliminate any material issues of

fact (see Winegrad v. New York Univ. Med. Ctr., 64 NY 2d 851 [1985]; Zuckerman v. City of New York, 49 NY 2d 557 [1980]).

James Cardillo, project manager for Mega, testified in his deposition (see Exhibit "F" to motion) that Mega at no time performed work in front of 40 Harrison Street and that the only work it did in the area was in front of Manhattan Community College adjacent to 40 Harrison Street, and that work was performed in September to November 2001.

In opposition to the motion, plaintiff submits an affidavit of Marie Benedetti, a non-party witness. Benedetti avers that she was walking alongside plaintiff on Greenwich Street near 40 Harrison Street and states that there was construction work going on at that location and there were construction materials on the sidewalk, including netting that was unsecured and whipping around in the wind. As they approached the entrance of 40 Harrison Street, Benedetti observed plaintiff's foot become caught in construction netting, causing her to fall to the ground. She stated that there were "Mega Contracting, Inc." signs next to the construction netting. Defendant, in its reply, submits an affidavit of its vice president, Hercules Argyriou, in which he avers that defendant did not perform work at the location in question and that if a Mega Contracting sign was present, it was placed there illegally.

Thus, the affidavits raise a question of fact as to whether defendant was performing construction work at the location in question at the time of the accident and whether it created or contributed to the condition that allegedly caused plaintiff to fall.

That branch of the motion seeking an order striking plaintiff's complaint and bill of particulars is granted to the extent that plaintiff shall be precluded from offering any evidence at trial in support of damages unless plaintiff furnishes, within 45 days after the date of service of this order with notice of entry upon the attorney for plaintiff, a responsive bill of particulars setting forth the specifics of her claimed injuries and medical treatment which plaintiff indicated in her bill of particulars would "be provided."

Dated: March 6, 2007

KEVIN J. KERRIGAN, J.S.C.