

**Strawn v City of New York**

2007 NY Slip Op 30543(U)

March 28, 2007

Supreme Court, New York County

Docket Number: 0116527/2002

Judge: Marilyn Shafer

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER, JSC

PART 62

*Justice*

Strawn, L

INDEX NO. 116527/02

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003

MOTION CAL. NO. \_\_\_\_\_

Food Emporium

- v -

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

| PAPERS NUMBERED |
|-----------------|
|                 |
|                 |
|                 |

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is decided  
per se to attached return

**MARILYN SHAFER, JSC**  
*[Signature]*

**FILED**  
APR 05 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

FOR THE FOLLOWING REASON(S):

Motion granted  
be re-argued &  
a City Part

Dated: 2/28/07

**HON. MARILYN SHAFER, JSC**  
*[Signature]*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER PART 8  
*Justice*

LYNETTE STRAWN,

Plaintiff,

-against-

INDEX NO. 116527/02

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT  
AUTHORITY, FOOD EMPORIUM and ZECKENDORF  
TOWERS,

Defendants.

ZECKENDORF TOWERS,

Thrd-Party Plaintiff,

-against-

EMPIRE CITY SUBWAY COMPANY (LIMITED),

Thrd-Party Defendant.

**FILED**

APR 05 2007

NEW YORK  
COUNTY CLERK'S OFFICE

The following papers, numbered 1 to 4, were read on this motion for summary judgment:

|                                   | <u>PAPERS NUMBERED</u> |
|-----------------------------------|------------------------|
| Notice of Motion — Exhibits       | 1                      |
| Notice of Cross-Motion — Exhibits | 2                      |
| Answering Affirmation — Exhibits  | 3                      |
| Reply Affirmation — Exhibits      | 4                      |

**Cross-Motion:**    **Yes**    **No**

**Upon the foregoing papers, it is ordered that the motion for summary judgment is granted and the cross motion for summary judgment is granted.**

Plaintiff LYNETTE STRAWN commenced this action to recover damages for injuries incurred when she fell, on April 30, 2001, as she exited the subway, on the sidewalk located in front of the FOOD EMPORIUM on the north side of 14<sup>th</sup> Street, with the specific address of 100 East 14<sup>th</sup> Street, County and State of New York, as the result of an allegedly dangerous condition on the sidewalk. Plaintiff initiated this action against THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, FOOD EMPORIUM and ZECKENDORF TOWERS, as the alleged owner of the premises leased by FOOD EMPORIUM. ZECKENDORF initiated a third-party action for indemnification and/or contribution against EMPIRE CITY SUBWAY COMPANY (LIMITED), alleging that, prior to STRAWN's accident, EMPIRE "performed construction work, including the opening and closing of the aforementioned area. where plaintiff allegedly sustained her injuries."

EMPIRE moves for an order pursuant to CPLR §3212 and CPLR §3211, dismissing all claims against it, submitting evidence that the only work it performed in the vicinity of the accident prior to the accident was in the roadway on the south side of East 14<sup>th</sup> Street, across the street from plaintiff's accident on the northern sidewalk. EMPIRE's motion is unopposed.

ZECKENDORF cross-moves for summary judgment, dismissing the complaint and all cross claims against it. It submits evidence that the accident occurred on the sidewalk adjoining One Union Square East Condominium, which includes residential and commercial units. The name "ZECKENDORF TOWERS," does not refer to the entire complex, but only to an unincorporated association of the residential unit owners. The entity as sued, therefore, has no responsibility for the care and maintenance of the sidewalk in front of the commercial units. Moreover, at the time of the accident,

responsibility for the maintenance of public sidewalks rested with the municipality, not the abutting landowners.

Plaintiff argues that a question of fact exists as to whether the name 'ZECKENDORF TOWERS' refers only to the residential units.

The law is clear that, prior to September 14, 2003, the duty to keep public sidewalks in a reasonably safe condition and to repair any defects fell upon the municipality. (*Weiskopf v City of New York*, 5 AD3d 202 [1<sup>st</sup> Dept 2004]); Administrative Code of the City of New York § 7-210. The owner or occupier of land abutting a public sidewalk did not owe a duty to the public to maintain the sidewalk in a safe condition. Rather, liability arose only if the abutting owner or lessee either (1) created the defect; or (2) used the sidewalk for a special purpose, such as when an appurtenance was installed for its benefit or at its request, contemplating a purpose different from that of the general public. (*Tyree v Seneca Center-Home Attendant Program, Inc.*, 260 A.D.2d 297 (1<sup>st</sup> Dept 1999)(citations omitted).

There is no indication that either ZECKENDORF or EMPIRE created the defect which caused STRAWN's accident or used the sidewalk for a special purpose. Therefore, the question of whether STRAWN has sued the proper entity is irrelevant, since the duty to maintain and repair the sidewalk lies exclusively with the CITY.

Accordingly, it is hereby

ORDERED that EMPIRE's motion for summary judgment is granted; and it is further

ORDERED that ZECKENDORF'S cross-motion for summary judgment is granted.

This reflects the decision and order of this Court.

Dated: \_\_\_\_\_

3/28/07

**FILED**  
APR 05 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

HON. MARILYN S. SHAFER, JSC

Check one:

FINAL DISPOSITION

NON-FINAL DISPOSITION