

Peralta v City of New York

2007 NY Slip Op 30594(U)

March 23, 2007

Supreme Court, Queens County

Docket Number: 0010251/2005

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

-----X
ISIDRA PERALTA,

Index

Number: 10251/05

Plaintiff(s),

- against -

Motion
Date: 03/20/07

CITY OF NEW YORK and HELLENIC ORTHODOX
COMMUNITY OF CORONA AND SUBURBS
"TRANSFIGURATION OF CHRIST,"

Motion
Cal. Number: 18
Motion Seq. No. 1

Defendant(s).

-----X

The following papers numbered 1 to 8 read on this motion by defendant City of New York for summary judgment dismissing the complaint and any cross-claims against it.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	1-4
Affirmation in Opposition.....	5-6
Affirmation in Opposition-Exhibits.....	7-8

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

Motion by the City for summary judgment dismissing the complaint and any cross-claims against it is granted.

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]). The City has met its burden.

Plaintiff allegedly sustained injuries as a result of tripping and falling upon a raised portion of the public sidewalk abutting the premises 37-57 98TH Street in Queens County on

February 6, 2005.

The City moves for summary judgment on the basis of §7-210 of the Administrative Code of the City of New York, which makes abutting property owners (except owners of one to three-family residential premises that are owner-occupied), rather than the City, liable for injuries sustained as a result of broken or defective sidewalks. In support thereof, the City has shown proof, and Hellenic does not dispute, that Hellenic and not the City owns the abutting premises. Moreover, there is no dispute that 37-57 98TH Street is not an owner-occupied one to three-family exclusively residential dwelling.

Property owners in the City of New York are required to repair and maintain at their own expense the public sidewalks abutting their premises, pursuant to §19-152 of the Administrative Code of the City of New York. However, a violation of that section, prior to September 14, 2003, could not form the basis of liability against them for injuries sustained by pedestrians. In the absence of any statute making property owners liable for injuries to pedestrians, liability remained exclusively upon the City.

The Administrative Code was amended in 2003 to add §7-210, which transferred liability from the City to property owners, except owners of one to three-family homes that are either wholly or partially owner-occupied and used exclusively for residential purposes.

Section 7-210 was enacted to absolve the City of any tort liability for personal injury or property damage and to shift that liability from the City to the property owner who breaches the duty to repair imposed by §19-152 (see Report of Committee on Transportation, 2003 New York City, NY Local Law Report No. 49 Int. 193; Puello v. City of New York, 35 AD 3d 294 [1st Dept 2006]). Section 7-210 (c) provides, "Notwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks . . . in a reasonably safe condition." The only exceptions stated in that section are where the adjacent or abutting property is an owner-occupied one to three-family residential home and where the City is the property owner. Neither of these exceptions applies in the instant case.

The affirmations in opposition fail to raise an issue of fact to rebut the City's prima facie showing of entitlement to summary judgment.

Accordingly, the motion must be granted and the complaint and any cross-claims insofar as asserted against the City are dismissed.

Dated: March 23, 2007

KEVIN J. KERRIGAN, J.S.C.