

**Bunton v City of New York**

2007 NY Slip Op 31158(U)

May 7, 2007

Supreme Court, New York County

Docket Number: 0117964/2005

Judge: Eileen A. Rakower

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

PRESENT: Rakower  
Justice

PART 5

Index Number : 117964/2005

BUNTON, GARY

vs

CITY OF NEW YORK

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

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

MOTION SEQ. NO. \_\_\_\_\_

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

motion to/for \_\_\_\_\_

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

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

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

PAPERS NUMBERED

1
2

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER

FILED  
MAY 10 2007

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/7/07

  
**EILEEN A. RAKOWER** 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  
COUNTY OF NEW YORK: PART 5

-----X  
GARY BUNTON and INGRID JOHNSON,

Plaintiffs,

Index No.  
117964/05

- against -

Decision and Order

THE CITY OF NEW YORK, HUDSON RIVER PARK TRUST,  
and STANDARD PARKING CORP.,

Defendants.

-----X  
HON. EILEEN A. RAKOWER

**FILED**  
MAY 10 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff Gary Bunton brings this action for personal injuries allegedly sustained when he tripped and fell on a stairway between the roof level and the second floor of the parking garage located at Pier 40, West Street, in the County and State of New York on May 9, 2005. Ingrid Johnson, Gary Bunton's wife, brings a derivative claim. The City of New York (City) moves to dismiss all claims and cross claims as against it on the ground that it does not own the premises where Mr. Bunton fell. Plaintiffs oppose. Hudson River Park Trust (HRPT) and Standard Parking Corp. (Standard) do not oppose.

City, in support of its motion, provides the affidavit of James Whooley, a Principal Title Examiner, who examined the record of ownership for Pier 40, West Street, and the appropriation map no. 4087, which demonstrates ownership of Pier 40.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 (1980). In addition, bald, conclusory allegations, even if believable, are not enough. *Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255, 309 N.Y.S.2d 341, 257 N.E.2d 890 (1970).

City has established by proof in admissible form that the owner of the subject premises is "The People of the State of New York" and not the City of New York. It is now incumbent upon plaintiffs to lay bare their proof and demonstrate a material issue of fact that would establish City is a proper party to this lawsuit.

Plaintiffs submit the transcript of the deposition of Gary Bunton, the pleadings, the verified Bill of Particulars, and stipulations of the parties prepared at two prior compliance conferences. Plaintiff argues that discovery is outstanding and the motion for summary judgment is premature. Plaintiff asserts that while City may not hold title in Pier 40, "it may control or operate the facilities existing thereon, including the parking garage, through a lease or other agreement."

Where facts essential to justify opposition to a motion for summary judgment are within the exclusive knowledge and possession of the moving party, summary judgment should be denied. ( See CPLR §3212(f) ) However, the opposition must offer more than mere hope that it might be able to uncover some evidence during the discovery process which will impeach the facts asserted by movant. See Pow v. Black, 182 AD2d 484 (1st Dept. 1992).

Plaintiff speculates that the City may be party to a lease or other agreement giving it control of the premises. Co defendants, HRPT and Standard have submitted no opposition. A newly joined co defendant Seven Star Electrical Contracting Corp., who has not yet joined issue according to plaintiffs, is also silent. It cannot be said that City has exclusive knowledge and possession of any such agreement.

Wherefore, it is hereby

ORDERED that The City of New York's motion to dismiss the claims and cross claims as against it only are granted; and it is further

ORDERED, that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Scheduled compliance conferences are cancelled. City shall serve a copy of this order with notice of entry upon all parties and the Trial Support Office, 60 Centre Street, Room 158; and it is further

ORDERED that the case in all other respects continues.

Dated: May 7, 2007



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Eileen A. Rakower, J.S.C.

**FILED**  
MAY 10 2007  
NEW YORK  
COUNTY CLERK'S OFFICE