[* 1]

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

PRESENT: Hon. Marilyn Shafer PART 8
Justice

Index Number : 122466/2001
EBNER, IRIS
VS
CITY OF NEW YORK
Sequence Number : 002
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

Motion to/for _____

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | |
| Answering Affidavits — Exhibits | |
| Replying Affidavits | |

**Cross-Motion:** ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

Is granted in accord with attached decision



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

Dated: 6/12/07

HON. MARILYN SHAFER, 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*

IRIS EBNER,

Plaintiff,

-against-

THE CITY OF NEW YORK, MHP LAND ASSOCIATES, NAMDOR, INC. and SPRING SCAFFOLDING, INC.,

Defendants.

INDEX NO. 12246601

MOTION DATE

MOTION SEQ. NO. 002

The following papers, numbered 1 to 3, were read on this motion for summary judgment:

| | PAPERS NUMBERED |
|---|---|
| Notices of Motion — Exhibits | 1 |
| Answering Affirmation — Exhibits | 2 |
| Reply Affirmation — Exhibits | 3 |

**Cross-Motion:** ☐ Yes ☐ No

**Upon the foregoing papers, it is ordered that the motion for leave to reargue is granted and, upon reargument, the motion for summary judgment is granted.**

Plaintiff Iris Ebner commenced this action to recover damages for injuries incurred when, on April 11, 2001, as the result of an allegedly dangerous condition, she fell on the sidewalk located on the southwest corner of 32nd Street and Third Avenue, adjacent to the premises known as 460 Third Avenue, in the City, County and State of New York. Defendants MHP Land

Associates, Namdor, Inc. and Spring Scaffolding, Inc., moved for an order pursuant to CPLR §3212, granting them summary judgment. This Court granted the motions of MHP Land Associates and Spring Scaffolding, Inc., but denied the motion of Namdor, Inc. Namdor now moves, pursuant to CPLR §2221, to reargue denial of its summary judgment motion.

Namdor contends that, as a matter of law, it is not liable for Ebner's injuries because her accident occurred prior to the enactment of New York City Administrative Code §7-210, on September 14, 2003. Consequently, at the time of the accident, the City of New York was liable for accidents caused by sidewalk defects.

Plaintiff's opposition in no way refutes Namdor's argument.

A motion for leave to reargue, pursuant to CPLR § 2221, is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended any relevant facts or misapplied any controlling principles of law (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). The purpose of reargument is not to serve as a vehicle to permit the unsuccessful party to advance arguments different from those tendered on the original application (*id.; see also Mariani v Dyer*, 193 AD2d 456 [1st Dept], *lv denied* 82 NY2d 658 [1993]).

The law is well settled 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 [1st 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 (1st Dept 1999)(*citations omitted).*

The Courts, have set forth three factors which are required in order to find the existence of a "special use" as a matter of law: 1.the installation of an object; 2. at the landlord's request; 3. for a purpose different from that of the general public. None of these factors is present here.

Plaintiff has failed, as a matter of law, to establish that Namdor either created the condition which caused the Eber's fall or that it made special use of the sidewalk..

Accordingly, it is hereby ORDERED that Namdor's motion for summary judgment is granted.

This reflects the decision and order of this Court.

**Dated:** _____

_____

HON. MARILYN SHAFER, JSC

**Check one: [ ] FINAL DISPOSITION [X] NON-FINAL DISPOSITION**