

Flores v City of New York

2007 NY Slip Op 33072(U)

September 10, 2007

Supreme Court, New York County

Docket Number: 0108712/2005

Judge: Karen Smith

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

PRESENT: HON. KAREN SMITH

PART 62

Index Number : 108712/2005

FLORES, MARIA

vs

CITY OF NEW YORK

Sequence Number : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE 09/20/07

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 5 were read on this motion ~~to~~ for summary judgment - dismissing the complaint against the defendant

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

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2-3

4-5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the annexed memorandum decision and order

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

FILED
SEP 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 9/10/07

KSS

HON. KAREN SMITH J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

-----X
MARIA FLORES,

Plaintiff,

-against-

THE CITY OF NEW YORK and the ROOSEVELT
ISLAND OPERATING CORPORATION OF THE
STATE OF NEW YORK,

Defendants.
-----X

Index No.: 108712/2005
Motion Seq.: 002
Motion Date: 09/20/2007

DECISION AND ORDER

FILED
SEP 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

PRESENT: KAREN S. SMITH, J.S.C.:

Defendant's, Roosevelt Island Operating Corporation of the State of New York (hereafter referred to as "RIOC"), motion for summary judgment dismissing the complaint herein as against it is granted.

Plaintiff (hereafter referred to as "Flores") brought this action to recover for personal injuries she allegedly sustained when she tripped and fell on uneven paving bricks located in the Tramway Plaza Park in close proximity to the elevator door and stairwell going up to the Manhattan side of the Roosevelt Island Tramway system.

RIOC now moves for summary judgment dismissing the complaint against it contending there is no evidence it had any duty with respect to the plaza below the tramway station nor any evidence that RIOC caused or created the defect with was allegedly involved in Flores's accident. In support of its motion, RIOC submits, *inter alia*, the deposition transcripts of one of its employees and the deposition transcripts of three City employees.

Both Flores and the City of New York (hereafter referred to as the "City") oppose the motion contending that there is a question of fact as to whether RIOC had a duty to maintain the area where Flores's accident occurred and was negligent in carrying out that duty. In support of

their opposition, the City and Flores both point to the testimony of Mr. Bob Redmond, one of the City's employees, as supporting their opposition to the instant motion.

In his deposition on behalf of RIOC, Christopher Baker (RIOC's employee) testified to the effect that RIOC was only responsible to maintain the tramway station, the booth, the elevator and the stairwell. He unequivocally testified that IROC had no responsibility for the plaza below the tramway station or any areas beyond the stairwell and elevator.

RIOC also attached to its moving papers, as Exhibit J, the deposition transcript of Mr. Steve DiGiovanni, as a Principal Parks Supervisor for the New York City Department of Parks. Mr. DiGiovanni testified to the effect that his responsibilities included supervision of the maintenance of the Tramway Plaza Park between 59th and 60th streets on Second Avenue and that, for as long as he has been the supervisor responsible for Tramway Plaza Park, the New York City Parks Department had conducted the inspection and maintenance of the plaza below the tramway station. He also testified; "I am not sure if the area around the elevators is our responsibility but I was not told otherwise. I am not certain." (Exhibit J, Page 13). Mr. DiGiovanni was specifically asked if the brickwork in front of the elevators is considered part of the plaza by the City, responded that he did not know and the Mr. Bob Redmond was in a position to know the answer to that question.

Also attached to RIOC's moving papers, as Exhibit M, are City Work Order Request forms dated "11/05/02" and "5/20/04", and, as Exhibit N, the deposition transcript of Mr. John Heimerle, a City Parks Department Supervisor. Both of the work order request forms, which are signed by Mr. Heimerle, indicate "Repair Pavers". In his deposition, Mr Heimerle was asked; "...who is responsible to actually maintain the brick pavers?" He responded: "We, I was told take care of property." He went on to testify that the City maintained the area of brick pavers

underneath the tramway station at the time of Flores's accident (see Exhibit N, pages 11 - 13).

The deposition transcript of Mr. Bob Redmond, as a Director of Capital Projects for Manhattan Parks, is attached to RIOC's moving papers as "Exhibit O". Mr. Redman testified to the effect that he had no involvement in the cleaning or inspection of the parks in general, or the Tramway Plaza Park in specific. Nevertheless, Mr. Redmond testified; "We maintained a certain portion of the plaza that is under our jurisdiction. There is one square that is on the map which is Exhibit A, that is specifically excluded from park property." (Exhibit O, Page12). However, Mr Redmond also testified he did not know whether the brick pavers near the elevator in the plaza were included or excluded in the portions of the plaza the City maintained. (See Exhibit O, Pages 11 &12). The map Mr Redmond referred to is attached to RIOC's moving papers as "Exhibit K".

A party moving for summary judgment; "... must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact ..." (*Alvarez v Prospect Hospital et al.*, 68 NY 2d 320,324 [1987]). Once the movant has made such a showing the burden shifts to the party opposing the motion to produce evidence in an admissible form sufficient to establish the existence of any material issues of fact requiring a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

In the instant matter, RIOC has met its burden by submitting the deposition testimony of its employee, Christopher Baker, who stated , unequivocally, that RIOC had the duty to maintain only the tramway station, elevator and stairwell and was not involved in or responsible for the plaza below the tramway station. RIOC also relies on the deposition transcripts, and documents offered by the City in connection with the depositions, of three City employees. Although the

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City employees equivocate about the City's responsibility for the pavers in the plaza below the tramway station, neither the City's employees' deposition testimonies nor the City's documents contradict RIOC's statements concerning the limits of the areas for which RIOC was responsible. Furthermore, the City's deposition testimony and documents make it clear that, whether the City had a legal obligation to or not, the City had, for years prior to Flores's accident, assumed the responsibility to clean and maintain the entire plaza area below the tram station. In fact, the City's records indicate that a City employee twice requested repairs to the pavers below the tram station. At least one of those requests for repairs came over two years prior to Flores's accident. In the face of the City's records, the equivocal and unsubstantiated testimony of the City employees to the effect that they did not know who was responsible for repairing the pavers at the location of Flores's accident, is not sufficient to raise a question of fact with respect to RIOC's responsibility for the pavers by evidence in admissible form. Accordingly, it is;

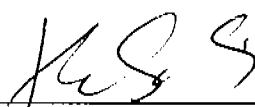
ORDERED that RIOC's motion for summary judgment dismissing the complaint herein as against it is granted and it is further;

ORDERED that upon the service of a copy of this decision and order upon the appropriate division of the clerk's office at 60 Centre Street, New York, New York, the clerk shall forthwith enter judgment in favor of RIOC dismissing the complaint herein as against RIOC only and severing and continuing the action as against the City.

The foregoing constitutes the decision and order of this court.

Dated: September 10, 2007

ENTER:



Hon. Karen S. Smith, J.S.C.

FILED
SEP 27 2007
NEW YORK
COUNTY CLERK'S OFFICE