

Lee Ng v City of New York

2007 NY Slip Op 33542(U)

October 15, 2007

Supreme Court, New York County

Docket Number: 0111235/2005

Judge: Karen Smith

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

PRESENT: **HON. KAREN SMITH**

PART 62

Justice

Index Number : 111235/2005
NG, LEE
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : # 003
SUMMARY JUDGMENT
4

INDEX NO. 111235-0

MOTION DATE _____

MOTION SEQ. NO. #003

MOTION CAL. NO. _____

are read on this motion ~~to~~ for Summary Judgment dismissing the complaint herein

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
1-2	_____
3	_____
4	_____

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

Cross-Motion: Yes No

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

FILED

OCT 31 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/15/07

K S S

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
LEE NG,

Plaintiff,

-against-

Index no.: 111235/2005
Motion seq.: 003
Motion date: 10/18/2007

CITY OF NEW YORK, MUSIC DEPOT, INC.,
A&A EXPRESS, INC., LAO SAN RESTAURANT
and BROADWAY CHINATOWN REALTY, INC.,

DECISION AND ORDER

Defendants.

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

Defendants, Lao San Restaurant (“LSR”)’s and Broadway Chinatown Realty, Inc (“BCRI”)’s, motion for summary judgment dismissing the complaint and all cross-claims asserted against them herein, is granted.

Plaintiff, Lee Ng (“Ng”) brought this action to recover for personal injuries she allegedly sustained when, on January 6, 2005, she tripped and fell on a sidewalk located at a corner of East Broadway near 24-26 East Broadway in Manhattan. In Ng’s deposition, she clearly testified that she tripped and fell on the curbstone where the street joins the sidewalk. She further testified she; “...was tripped by the broken curb” (Ng’s deposition transcript, Page 44, Line 23). Additionally, Ng specifically identified the curb stone as the location of her accident in photographs which were marked as exhibits to her deposition.

BCRI is an adjoining landowner at the location of Ng’s accident and LSR is the tenant of a portion of the first floor commercial space in one of the buildings adjoining the location of Ng’s accident. BCRI and LSR each move for summary judgment dismissing the complaint and any cross-claims asserted against them in this action. They argue there are no questions of fact

requiring a trial of the instant action and neither of them had any duty to the public or the plaintiff to maintain or repair the curb at the location of Ng's accident. Therefore, they contend that no tort liability may accrue to either of them for any injuries Ng may have sustained as a result of her accident.

Ng opposes both motions. Ng's attorney's affirmation in opposition to the motion argues that the case of *Irizarry v The Rose Bloch 107 University Place Partnership, et al*, (12 Misc.3d 733, Supreme Court, Kings County, 2006), which holds that the duty of an adjoining landowner to repair and maintain the sidewalk abutting the landowner's property does not extend to the curbstone, is incorrectly decided and not binding precedent upon which this court is compelled to conclude BCRI or LSR are entitled to summary judgment dismissing the complaint herein.

"[T] the proponent of a summary judgment motion 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 (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

In the instant matter, BCRI and LSR have presented undisputed facts, in the form of Ng's deposition testimony and photographs, showing that Ng's accident occurred when she tripped on an uneven curbstone. Effective September 13, 2003 (over a year before Ng's accident), New York City Administrative Code § 7-210(a) provides that, with certain exceptions not relevant here, landowners have a duty to maintain the "sidewalks" adjoining their property. However, the statute does not create any obligation on landowners to maintain "streets" adjoining their

property. New York City Administrative Code §7-201(c)(1)(b) does not include the curbstone within the definition of the term "sidewalk" while New York City Administrative Code §7-201(c)(1)(a) specifically provides; "The term 'street' shall include the curbstone...". Therefore, even though the *Irizarry* case is not binding precedent upon this court, the court agrees with the determination reached in *Irizarry*. Thus, BCRI and LSR have made a *prima facie* showing of their entitlement to a judgment dismissing the complaint against them as a matter of law.

In response, Ng has failed to produce any evidence in an admissible form which is sufficient to raise a triable issue of fact. Accordingly, it is;

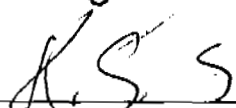
ORDERED that BCRI's and LSR's motion for summary judgment dismissing the complaint and all cross-claims asserted against them in this action is granted, and it is further;

ORDERED that, upon service of a copy of this order, together with notice of entry hereof and such other forms and fees as may reasonably be required by the Clerk, upon the Clerk of the Court at 60 Centre Street, New York, New York, the Clerk shall, forthwith, enter judgment dismissing the complaint and all cross-claims asserted in this action against BCRI and LSR, (only), the claims against the remaining defendant, City of New York, shall be deemed severed and this action shall continue with respect to the City of New York.

The foregoing constitutes the decision and order of this court.

Dated: October 15, 2007

ENTER:



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

FILED
OCT 31 2007
COUNTY CLERK'S OFFICE
NEW YORK