

Goldstein v Arc on 4th St., Inc.
2010 NY Slip Op 30406(U)
March 1, 2010
Supreme Court, New York County
Docket Number: 106770/09
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
J.S.C. Justice

PART 52

Index Number : 106770/2009

GOLDSTEIN, SHARON

VS.

ARC ON 4TH STREET

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this 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 decided in accordance with the attached decision. This case is hereby transferred to a non-City part as the complaint has been dismissed against the City.

FILED

MAR 03 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/1/10

CK
J.S.C.

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Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
SHARON GOLDSTEIN,

Plaintiff,

Index No. 106770/09

-against-

DECISION/ORDER

ARC ON 4TH STREET, INC., COOPER SQUARE
MUTUAL HOUSING ASSOCIATION II HOUSING
DEVELOPMENT FUND COMPANY, INC.,
COOPER SQUARE MUTUAL HOUSING
ASSOCIATION II HOUSING DEVELOPMENT FUND
COMPANY COMMUNITY LAND TRUST, INC. and
THE CITY OF NEW YORK,

Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

FILED
MAR 03 2010
NEW YORK
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u> </u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained when she tripped and fell on the sidewalk located between 57 East 5th Street and 59 East 4th Street on November 2, 2008. The sidewalk where she tripped was in front of premises owned by defendant Arc on 4th Street, Inc. and those premises are not a one-, two- or three-family home. Defendant the City of New York (the "City") now moves for summary

judgment dismissing the complaint on the ground that the City is not liable pursuant to Administrative Code §7-210. For the reasons set for the below, defendant City's motion is granted.

The City of New York is not liable for injuries arising from defective sidewalk conditions pursuant to §7-210 of the Administrative Code, which shifted liability for sidewalk defects from the City to the adjacent landowner except where the adjacent property is an owner-occupied one-, two- or three-family dwelling. Section 7-210 provides in pertinent part:

b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk... shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition.

c. 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 (other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition.

In the instant case, the City makes out its prima facie case that the abutting property did not fall into one of the exceptions enumerated by §7-210. It is undisputed that the City did not own the abutting property. The City has also established that the abutting property was not an owner-occupied residential property with three or fewer units by submitting a printout from the RPAD database, which is sufficient to establish the character of the abutting property. *See Dimitratos v City of New York*, 25 Misc.3d 1224(A) (Sup Ct, New York Cty, 2009).

However, the City can still be held liable for injuries resulting from a defective sidewalk

condition that it “caused or created” or if the sidewalk was used for a “special use” which conferred a benefit upon the City. *See Scavuzzo v City of New York*, 47 A.D.3d 793 (2nd Dept 2008); *Fernandez v City of New York*, 19 Misc.3d 1135(A) (Sup Ct, Kings Cty 2008). If plaintiff claims that the City caused or created the condition, plaintiff must show that the City created the defect through an affirmative act of negligence “that immediately result[ed] in the existence of a dangerous condition.” *Yarborough v City of New York*, 10 N.Y.3d 726 (2008) (citations omitted); *see also Scavuzzo*, 47 A.D.3d 793, 794-95. In *Yarborough*, the Court of Appeals held that the City should be granted summary judgment because plaintiff failed to establish that the City had negligently performed a pothole repair which immediately resulted in a dangerous condition. *See* 10 N.Y.3d 726.

Plaintiff fails to raise an issue of triable fact as to whether the City caused or created the condition. Although she submits permits issued for work done in the vicinity of the subject accident, she fails to establish that the City did any work at the site itself. She also fails to submit any evidence that the City employed the sidewalk for a “special use.”

Finally, plaintiff’s argument that summary judgment is premature is unavailing. “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion.” *Davila v New York City Transit Auth.*, 66 A.D.3d 952, 953-54 (2nd Dept 2009); *see also Brown v Bauman*, 42 A.D.3d 390, 392-93 (1st Dept 2007). Plaintiff fails to offer any basis other than speculation for its claim that further discovery would uncover facts sufficient to deny summary judgment.

Accordingly, defendant City’s motion for summary judgment is granted and plaintiff’s

