

Johns v City of New York

2010 NY Slip Op 31062(U)

April 27, 2010

Sup Ct, NY County

Docket Number: 100857/07

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE
Justice

PART 5

Index Number : 100857/2007

JOHNS, THERESA

VS.

CITY OF NEW YORK

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

COL # 57

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

on 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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

MAY 04 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/27/10

[Signature] J.S.C.
BARBARA JAFFE

APR 27 2010

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

*Comm
005
5-3-10*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----x
THERESA JOHNS,

Plaintiff,

-against-

Index No.

100857/07

Motion Date: 04/20/10

Motion Seq. No.: 001

Calendar No.: 57

THE CITY OF NEW YORK, CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC. and
200 WATER, L.L.C.,

Defendants.
-----x

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FILED
MAY 04 2010
NEW YORK
COUNTY CLERK'S OFFICE

By notice of motion dated February 17, 2010, defendant 200 Water, LLC (200 Water) moves for an order summarily dismissing the complaint against it. Plaintiff and co-defendant Consolidated Edison of New York (Con Edison) oppose; co-defendant City of New York (City) does not oppose. By notice of cross-motion dated March 16, 2010, City moves for an order summarily dismissing the complaint against it. None of the parties oppose, and the motion is granted. For the reasons that follow, 200 Water's motion is granted.

I. UNDISPUTED FACTUAL BACKGROUND

On April 7, 2006, plaintiff tripped and fell on a manhole cover owned by Con Edison, on the sidewalk in front of 200 Water Street, a building owned by 200 Water. (Affirmation of Michael White, Esq., dated Feb. 17, 2010 [White Aff.]). Plaintiff alleges that she tripped because the manhole cover was “a couple of inches” lower than the surrounding sidewalk. (*Id.*, Exh. D at 22).

II. PERTINENT PROCEDURAL BACKGROUND

On January 16, 2007, plaintiff commenced an action by serving a summons and complaint on all defendants. (*Id.*). On September 24, 2007, plaintiff served a verified bill of particulars, wherein she alleged that she “tripped and fell due to a depressed manhole which was not flush with the sidewalk.” (White Aff., Exh. C).

On July 16, 2009, Virgil Ivanus, the building’s manager, testified at a deposition that 200 Water did not perform any repairs or alterations to the sidewalk adjacent to the building. (White Aff., Exh. F at 26, 30). However, the building’s staff swept the sidewalk three times a week, looked at the sidewalk every day or every other day to determine whether it should be swept, and cleared the sidewalk when it snowed. (*Id.* at 15, 17, 27). He identified the manhole cover on the sidewalk as Con Edison manhole covers with “Con Edison” written on them. (*Id.* at 19).

On August 16, 2009, Con Edison responded to plaintiff’s notice to admit, admitting ownership of the manhole cover. (White Aff., Exh. H). On November 5, 2009, Dean Fanzio, Con Edison’s operating supervisor for steam distribution, testified at a deposition that Con Edison owns the manhole cover. (White Aff., Exh I at 18-19).

III. 200 WATER'S MOTION TO DISMISS

A. Contentions

200 Water argues that it cannot be held liable for plaintiff's injuries because Con Edison is solely responsible for the manhole cover, and thus, had the sole duty to maintain or repair it. (White Aff.). It relies on New York City Highway Rule § 2-07, and Con Edison's admission that it owns the manhole cover. (Id., Exhs. H, I). Con Edison and plaintiff argue that 200 Water, as owner of the abutting property, may be held liable for plaintiff's injuries pursuant to New York City Administrative Code § 7-210, and given its failure to complain to Con Edison or anyone else about the condition of the manhole cover. (Affirmation of Geraldine O'Donnell, Esq., dated Feb. 24, 2010; Affirmation of Jeremy Schiowitz, Esq., dated Mar. 19, 2010).

B. Analysis

Pursuant to Administrative Code § 7-210, a property owner is liable for the sidewalk abutting its property, which liability is limited to "the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags." As this provision is in derogation of the common law, under which the abutting property owner was not liable for the public sidewalk, it must be strictly construed. (*Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 521 [2008]).

Pursuant to New York City Highway Rules, however, the responsibility to monitor manhole covers and gratings on the street remains with the owner of the cover or grating, including a surrounding twelve-inch radius. (34 RCNY § 2-07[b][1]). The Highway Rules expressly provide that the "street" includes the "sidewalk." (34 RCNY § 2-01; *Cruz v New York City Trans. Auth.*, 19 AD3d 130, 131 [1st Dept 2005]). It has thus been held that an abutting

property owner is not responsible for a cover or grating located on a sidewalk. (*Celestin v MTA New York City Trans.*, 2009 WL 3706413 [Sup Ct, New York County 2009]; *Storper v Kobe Club*, 2009 NY Slip Op 31397[U] [Sup Ct, New York County 2009]; *Lightsy v City of New York*, 2007 NY Slip Op 33823[U] [Sup Ct NY Cty 2007]).

As Con Edison has admitted its ownership of the manhole cover which is the alleged cause of plaintiff's fall, there is no dispute that it is liable for its maintenance. (*See Cruz*, 19 AD3d at 130-31 [New York City Transit Authority, as owner of metal grating, may be held liable under § 2-07(b)]). And plaintiff offers no authority for the proposition that an abutting owner has the duty to inform the manhole cover's owner of any defective conditions. (*Cf King v Alltom Prop.*, 16 Misc 3d 1125[A] [Sup Ct, Kings County 2009] [abutting landowner has no duty to notify City of broken signpost on sidewalk, liability for signpost on public sidewalk resides solely with City per regulation]). Absent any duty to maintain the cover or notify the proper party of alleged defects, 200 Water cannot be held be liable for accidents attributable to its condition.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that 200 Water, LLC's motion for an order granting it summary judgment is granted, and the action against it is dismissed; it is further

ORDERED, that City of New York's motion for an order granting it summary judgment is granted without opposition, and the action against it is dismissed; 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. Plaintiffs shall serve a copy of this order on all

other parties and the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled; and it is further

ORDERED, that the remainder of this action shall continue.

This constitutes the decision and order of the court.


Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: April 27, 2010
New York, New York

'APR 27 2010

FILED
MAY 04 2010
NEW YORK
COUNTY CLERK'S OFFICE