

Mosezelle v 125th & Lenox LLC

2011 NY Slip Op 30055(U)

January 7, 2011

Supreme Court, New York County

Docket Number: 116855/07

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK
J.S.C. Justice

PART 2

Moselle

INDEX NO.

116855/2007

MOTION DATE

MOTION SEQ. NO.

002

MOTION CAL. NO.

125th & Lenox, LLC

- v -

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED BY COURT CLERK
WITH ACCOMPANYING MEMORANDUM DECISION.

FILED

JAN 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/7/11

York

LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----x
WILSON E. MOSEZELLE,

Plaintiff,

-against-

125TH & LENOX LLC
AND GATEWAY DEMOLITON CORP.,

Defendants.
-----x

Index No. 116855/07

DECISION/ORDER

FILED

JAN 11 2011

Louis B. York, J.S.C.:

NEW YORK
COUNTY CLERK'S OFFICE

Defendant, 125th and Lenox LLC (Lenox), owned a group of decaying buildings adjoining 112 West 125th Street, New York, NY. The buildings, including building number 112, required emergency demolition because of their extremely decrepit conditions. On May 10, 2006, Lenox hired Defendant, Gateway Demolition Corp. (Gateway), to perform the necessary demolition work. Gateway performed the demolition by entering the property through an empty lot on West 124th Street. This lot also served as a parking area for the trucks and demolition machinery. After Gateway razed the buildings to the ground, the lot was razed and a chain link fence was erected in front of West 125th Street. Sometime thereafter, Lenox performed a final walkthrough of the property before issuing a final payment to Gateway.

After the demolition work was complete, but prior to Gateway removing their trucks and machinery from the worksite, Plaintiff, Mosezelle Wilson was walking alongside of the property on December 31, 2006. A defect, consisting of a 3 inch raised portion of concrete, on the sidewalk abutting the empty lot on West 125th caused Plaintiff to trip, fall and sustain personal injury. As a result, Plaintiff filed suit on December 17,

2007 seeking to recover damages for her injuries.

Gateway moved for summary judgment requesting dismissal of the action on January 29, 2010. Lenox filed a cross motion seeking the same relief on March 29, 2010. Plaintiff filed an objection to both motions on April 21, 2010. The court reasoned that Plaintiff failed to show that Lenox had notice of the sidewalk's defect prior to her injury.

It is well established that summary judgment is "a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues." Andre v. Pomeroy, 35 N.Y.2d 361, 364 (1974). Summary judgment is not suitable when controversy exists regarding material facts. Matter of Council of City of N.Y., v. Bloomberg, 6 N.Y.3d 380 (2006). Additionally, when assessing a motion to accelerate judgment, "the facts must be viewed in the light most favorable to the non-moving party." Id. at 401.

When viewing the facts in favor of Plaintiff, a question of fact defeats Gateway's motion. However, soon after Gateway performed work on the property and prior to withdrawing from it, Plaintiff suffered her injuries when she tripped and fell over the broken sidewalk. Thus, it is reasonable for a jury to infer that Gateway was responsible for creating the defective condition.

Moreover, Gateway is unsuccessful demonstrating that it "exercise[d] reasonable care in the performance of [its] duties, and did not 'launch a force or instrument of harm.'" Espinal v. Melville Snow Contrs., 98 N.Y.2d 136, 140 (2002) (quoting H. R.

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Moch Co. v. Rensselaer Water Co., 247 N.Y. 160 [1928]). It is well established that “a simple denial...without presenting any additional facts will not suffice for summary judgment.” Aimatop Restaurant, Inc. v. Liberty Mut. Fire Ins. Co., 425 N.Y.S.2d 8, 9, 74 A.D.2d 516, 517 (1st Dept 1980). Hence, the court cannot be persuaded by Gateway’s motion alleging denial of any negligent wrongdoing, without further explanation of the reasons therein. The insufficiency of Gateway’s papers should not preclude Plaintiff from having her day in court. See Andre v. Pomeroy.

Furthermore, the vice-president of Gateway, Michael Richman, stated that he visited the worksite frequently, and that the final walkthrough of the property consisted merely of “[a] brief visual inspection.” Richman Transcript at 3, ¶ 22. He also admitted on a number of occasions in the past, he has noticed broken sidewalks after his company completed demolition jobs. Thus there is an issue of fact regarding Gateway’s constructive knowledge of the sidewalk’s defective condition. See Boyd v. Manhattan & Bronx Surface Tr. Operating Auth., 2007 NY Slip Op 7770, 3 (2007).

The cross motion for summary judgment dismissing this action against 125th & Lenox, LLC, the owner of the premises is granted. Plaintiff is unable to show that the owner had notice of the defective condition of the premises prior to the accident. However, the request for attorney’s fees is denied. The movant provides no discussion of the reasons justifying an award for attorney’s fees.

Accordingly, it is

ORDERED that defendant Gateway Demolition Corp.’s motion for summary judgment is denied; and it is further

ORDERED that 125th & Lenox, LLC's motion to dismiss this action against it is granted; and it is further

ORDERED that 125th 7 Lenox's request for attorney's fees is denied.

Dated: 1/7/11

ENTER:

Levy
Louis B. York, J.S.C.

FILED

JAN 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

LOUIS B. YORK
J.S.C.