

Saks v City of New York
2011 NY Slip Op 32145(U)
August 3, 2011
Supreme Court, New York County
Docket Number: 104766/08
Judge: Cynthia S. Kern
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT:

CYNTHIA S. KERN
J.S.C.

PART

52

Motion

Index Number : 104766/2008

SAKS, DOUGLAS

VS.

CITY OF NEW YORK

SEQUENCE NUMBER : 002

SUMMARY JUDGMENT

INDEX NO.

104766/08

MOTION DATE

8

MOTION SEQ. NO.

02

MOTION CAL. NO.

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 annexed decision.

FILED

AUG 05 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated:

8/3/11

CYNTHIA S. KERN

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: Part 52

-----X
DOUGLAS SAKS AS PROPOSED ADMINISTRATOR
FOR THE ESTATE OF SUE MARION SAKS,

Plaintiff,

Index No. 104766/08

-against-

DECISION/ORDER

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, 110
CHURCH, LLC and WORLD WIDE HOLDING
CORPORATION,

Defendants.

FILED

AUG 05 2011

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

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>1,2</u>
Notice of Cross Motion and Answering Affidavits.....	<u>3</u>
Affirmations in Opposition to the Motion	<u> </u>
Affirmations in Opposition to the Cross-Motion.....	<u> </u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

Plaintiff commenced the instant action to recover damages for personal injuries allegedly sustained by his mother, the deceased Sue Saks, when she tripped and fell on the sidewalk in front of the premises known as 110 Church Street, New York, New York on January 24, 2007. Defendant the City of New York (the "City") now moves for summary judgment dismissing the complaint and any cross-claims against it. Defendants 110 Church, LLC ("110 Church") and World Wide Holding Corporation ("World Wide") also move for summary judgment dismissing

the complaint and any cross-claims against them on the ground that the location of the accident and what caused the accident cannot be identified. Plaintiff cross-moves seeking to compel 110 Church and World Wide to comply with court-ordered discovery. The City's motion for summary judgment is granted without opposition. For the reasons set forth below, the motion for summary judgment made by 110 Church and World Wide is also granted and plaintiff's cross-motion to compel defendants to produce further discovery is denied.

The relevant facts are as follows. The former plaintiff, Sue Marion Saks, commenced the instant action against the above defendants to recover for personal injuries allegedly arising when she tripped and fell "in front of 110 Church Street, County of New York, State of New York" on January 24, 2007. After the action was commenced, but before the former plaintiff was deposed, Ms. Saks passed away and her son, the current plaintiff and the proposed administrator for her estate, was substituted. However, the current plaintiff does not have any personal knowledge as to where or how Ms. Saks tripped and fell. Plaintiff testified that decedent told him her accident happened in front of a parking garage on Church Street, yet he does not know which parking garage, the address of said parking garage or if a parking garage exists on Church Street as there is no parking garage entrance located at 110 Church Street. Although plaintiff was ordered to provide a supplemental bill of particulars specifying the exact location of decedent's accident, he has failed to do so. Additionally, plaintiff testified that decedent was unable to specify in photographs the broken sidewalk that allegedly caused her to trip and fall. Furthermore, no witnesses have been disclosed by plaintiff to testify as to the location of plaintiff's accident and no witnesses have been identified by defendants. As Ms. Saks is deceased, she will not be able to offer any other information or evidence as to the location or cause of the incident.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a prima facie right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

In the instant case, 110 Church and World Wide are entitled to judgment as a matter of law as the location of the decedent’s accident and the cause of the accident cannot be established and will not be established at any point in the future. As stated more fully above, plaintiff does not know nor does he have any evidence of where decedent fell or what caused her to trip and fall. Furthermore, any determination as to how the accident occurred would be based on speculation as no 50-H hearing was held and thus, plaintiff does not have sufficient information to maintain a claim against 110 Church or World Wide on behalf of decedent.

Additionally, plaintiff’s cross-motion to compel defendants World Wide and 110 Church to produce further discovery is denied. World Wide and 110 Church have complied with the required discovery by providing three affidavits asserting that there are no witnesses with personal knowledge of where or how plaintiff’s accident occurred. Plaintiff’s assertion that 110 Church and World Wide’s motion is premature because depositions of potential witnesses are necessary is without merit. “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 the claim that further discovery would uncover facts sufficient to deny summary judgment.

Accordingly, the City's motion for summary judgment is granted without opposition. 110 Church and World Wide's motion for summary judgment dismissing plaintiff's complaint and all cross-claims against them are granted and plaintiff's cross-motion is dismissed. Plaintiff's complaint is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 8/3/11

Enter: CK
J.S.C.

CYNTHIA S. KERN
J.S.C.

FILED

AUG 05 2011

**NEW YORK
COUNTY CLERK'S OFFICE**