

**Sanchez v New York City Hous. Auth.**

2011 NY Slip Op 32931(U)

November 4, 2011

Sup Ct, NY County

Docket Number: 107221/09

Judge: Cynthia S. Kern

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

CYNTHIA S. KERN  
J.S.C.

PRESENT: \_\_\_\_\_  
Justice

PART 52

Index Number : 107221/2009  
**SANCHEZ, PEDRO**  
VS.  
**HOUSING AUTHORITY**  
SEQUENCE NUMBER : 001  
COMPEL

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

Motion to/for \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

## FILED

NOV 07 2011

NEW YORK  
COUNTY CLERK'S OFFICE

is decided in accordance with the annexed decision.

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

Dated: 11/4/11

CK, J.S.C.

CYNTHIA S. KERN

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

-----X  
PEDRO SANCHEZ,

Plaintiff,

Index No. 107221/09

-against-

**DECISION/ORDER**

THE NEW YORK CITY HOUSING AUTHORITY,

**FILED**

Defendant.

**NOV 07 2011**

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

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_ **NEW YORK COUNTY CLERK'S OFFICE**

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	_____
Cross-Motion and Affidavits Annexed.....	2
Answering Affidavits to Cross-Motion.....	3
Replying Affidavits.....	4
Exhibits.....	5

Plaintiff commenced the instant action to recover damages for personal injuries he allegedly sustained when he tripped and fell on the curb in front of 1315 Amsterdam Avenue, New York, New York on October 15, 2008. Plaintiff now moves to compel defendant the New York City Housing Authority ("NYCHA") to appear for another deposition. NYCHA cross-moves pursuant to CPLR §3212 for summary judgment dismissing the complaint and all cross-claims against it on the grounds that NYCHA is not liable for defects in the curb and that it did not cause and create the alleged defect. For the reasons set forth below, plaintiff's motion is denied and NYCHA's cross-motion is granted.

The relevant facts are as follows. On October 15, 2008, plaintiff allegedly tripped and fell on the curb in front of 1315 Amsterdam Avenue near West 125<sup>th</sup> Street, New York, New York, a/k/a the Ulysses S. Grant Housing Project. Subsequent to commencing this action, plaintiff appeared for an examination pursuant to General Municipal Law §50-h. Plaintiff testified that his accident occurred as he was exiting a bus that he was driving in connection with his employment. When plaintiff stepped down from the bus, he alleges that his foot went “into the hole” in the curb at the above location and he was caused to trip and fall. At his examination, plaintiff circled a portion of a photograph depicting the curb on which he tripped and fell and described the location as a black area where “concrete was missing.”

This court will first address NYCHA’s cross-motion for summary judgment. 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 action, NYCHA has established its prima facie right to summary judgment as it has shown that it was not responsible for defects in the curb at the location where plaintiff tripped and fell and that it did not cause or create said defect. While the Administrative Code of the City of New York §7-210 transferred tort liability for defects in the sidewalk from the City of New York to certain adjacent property owners, it is clear that curbs, pedestrian ramps and tree

wells are exempt from this statutory scheme. *See Vucetovic v. Epsom Downs*, 10 N.Y.3d 517 (2008); *see also Ortiz v. City of New York*, 67 A.D.3d 21 (1<sup>st</sup> Dept 2009) (holding that §7-210 does not impose tort liability on abutting property owners for defects on pedestrian ramps, as these ramps are part of the curb, not the sidewalk.) Therefore, as the abutting property owner, NYCHA cannot be held liable for the defect in the curb on which plaintiff tripped and fell. Moreover, NYCHA has established that it did not cause and create said defect. NYCHA submitted the affidavit of John Mangi, Supervisor of Bricklayers for NYCHA, in which Mr. Mangi attests that he reviewed the records found by NYCHA of the location of plaintiff's accident and that they reveal that no work was performed to the perimeter sidewalks or curbs located in front of 1315 Amsterdam Avenue, New York, New York. Additionally, Mr. Mangi attests that NYCHA employees were not permitted to maintain or do any work on exterior sidewalks or curbs in front of NYCHA premises for at least two years prior to the date of plaintiff's accident. The affidavit of Mr. Mangi, someone with personal knowledge of the work done by NYCHA, is sufficient to satisfy NYCHA's prima facie showing requirement.

In response, plaintiff has failed to raise an issue of fact as to whether NYCHA is responsible for defects in the curb or whether it caused or created the defect in the curb. Plaintiff's assertion that NYCHA's motion is premature due to outstanding discovery 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). NYCHA submitted an affidavit of Mr. Mangi, the person whom the plaintiff seeks to depose. In his affidavit, Mr. Mangi attests that

