

Coates v City of New York

2011 NY Slip Op 33797(U)

August 19, 2011

Supreme Court, New York County

Docket Number: 114534/08

Judge: Geoffrey D. Wright

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: GEOFFREY D.S. WRIGHT
Justice

PART 62

114534/08

GEORGIA COATES,

INDEX NO. ~~038052/08~~

Plaintiff/Petitioner(s)

MOTION DATE _____

- v -

MOTION SEQ. NO. 005

THE CITY OF NEW YORK, THE DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES OF THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF BUILDINGS, THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, DUANE READE, INC., DUANE READE REALTY, INC., FRAM REALTY, LLC and 280 BROADWAY LLC,

Defendant/Respondent(s)

The following papers, numbered 1 to 7 were read on this motion/petition to dismiss all claims against the Municipal defendants and Duane Reade

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

	PAPERS NUMBERED
Notice of Motion/Petition Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits _____	3,4,5,6
Replying Affidavits _____	7
Other _____	
Cross-Motion: X Yes No	2

Upon the foregoing papers, it is ordered that this motion/petition by the municipal defendants and the cross-motion by Fram, to dismiss all claims against them is granted a/p/o.

This case is to be transferred to a non-City part.

Aug 19, 2011



GEOFFREY D. WRIGHT, J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

FILED

SEP 08 2011

NEW YORK COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 62

-----X
GEORGIA COATES,

Plaintiff/Petitioner(s),

-against-

THE CITY OF NEW YORK, THE DEPARTMENT
OF CITYWIDE ADMINISTRATIVE SERVICES
OF THE CITY OF NEW YORK, THE NEW YORK
CITY DEPARTMENT OF BUILDINGS, THE NEW
YORK CITY ECONOMIC DEVELOPMENT
CORPORATION, DUANE READE, INC., DUANE
READE REALTY, INC., FRAM REALTY LLC
and 280 BROADWAY LLC,

Defendant/Respondent(s).

-----X

Index #114534/08
Motion Cal. #
Motion Seq. #
DECISION/ORDER
Present:
Hon. Geoffrey Wright
Judge, Supreme Court

FILED

SEP 08 2011

NEW YORK
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219(a), of the papers considered in the review of
this Motion to: dismiss all claims against the municipal defendants

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	3,4,5,6
Replying Affidavits & Exhibits Annexed	7
Other (Cross-motion) & Exhibits Annexed	2

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Plaintiff was injured when she slipped on what describes as black ice near a coffee cart at or near the corner of Chambers Street and Broadway. The accident took place on February 11, 2008, at approximately 8:55 A.M. The Plaintiff was on her way to work, and had stopped at the cart for milk and pastry. The City of New York, its Department of Citywide Administrative Services, Department of Buildings and Economic Development Corporation, together the Municipal Defendants, moves to dismiss the complaint on the ground that they had neither notice nor reasonable opportunity to clear the black ice from the sidewalk.

In support of the motion, the Municipal Defendants submit the deposition testimony of Daniel Pugach, a custodian employed the Department of Citywide Administrative Services. He

testified to the procedures for ice and snow removal, and when this would be done. According to his testimony about manpower scheduling, there is a nine-hour gap, from 11:00 P.M., when the last person leaves, and 8:00 A.M., when the day staff arrives for work. He also testified to the number of times that the sidewalks around the building near where the Plaintiff fell, 280 Broadway, would be inspected and cleaned or cleared.(tr 12, 5-7). The schedule for inspecting and cleaning the sidewalks outside of 280 Broadway was 3-4 four times a day beginning at 6:00 A.M. For the purpose of his motion, there would have been an inspection of the sidewalk no more than three hours before the Plaintiff had her accident. When there is snow in the afternoon, no one goes home until the sidewalks are cleared, notwithstanding the time.

Supplementing the deposition testimony, the Municipal Defendants offer the weather record for the month of February 2008. According the weather record, the temperature in the ten days preceding the accident reached freezing on February 1, when the lowest temperature was 32, on February 10, when the lowest temperature was 15, and the day of the accident, when the lowest temperature was 10 degrees. The weather record does not give the hours when these temperatures were reached. However, in the days preceding the accident, excluding February 1 and 10, the lowest temperature was 33, on February 3. The high temperature was never below 42, until the day of the accident, with a high of 68 degree five days before. The Plaintiff objects to the use of the weather record because it is not certified. However, Courts have for more than a century, been taking judicial notice of the weather [*PEOPLE v. SANTIAGO*, 64 A.D.2d 355, 409 N.Y.S.2d 716, “We are asked to and do take judicial notice of the weather” citing *Hunter v. New York, Ont. & W. R.R. Co.*, 116 N.Y. 615, 23 N.E. 9].

Where, as here, we have testimony about the steps taken to preserve the safety of the sidewalk, the building owner has acquitted itself of its obligations to the public. [*SPECTOR v. CUSHMAN & WAKEFIELD, INC.*, --- N.Y.S.2d ----, 2011 WL 3332411 (N.Y.A.D. 1 Dept.), 2011 N.Y. Slip Op. 06189, “in *Rodriguez v. 705-7 E. 179th St. Hous. Dev. Fund Corp.*, 79 A.D.3d 518, 913 N.Y.S.2d 189 [2010], we affirmed an order granting an owner's summary judgment motion on the basis of a record that included testimony by the owner's president that he had checked the area of the subject accident on the preceding night.”] I find that the security measures testified to by the Municipal witness goes beyond the standard found acceptable in the *SPECTOR* case, *supra*.

There is no claim that the ice on which the Plaintiff fell was created by any of the Defendants. The issue then is time to find and correct the condition. The Municipal Defendants have satisfied this burden by setting forth reasonable efforts to find and remove any ice or other trash on the sidewalks outside of 280 Broadway. The foregoing reasoning applies to the cross-motion by Fram Realty for summary judgment dismissing the claims against it. The motions to dismiss the claims against the Municipal Defendants and Fram Realty is granted.

Before concluding, I note that other co-defendants had made motions to dismiss based on contractual issues. Although those motions were denied, they might well have been granted on the issues raised on this motion.

This constitutes the decision and order of the Court.

Dated: August 19, 2011



GEOFFREY D. WRIGHT
AJSC

FILED

SEP 08 2011

NEW YORK
COUNTY CLERK'S OFFICE