

White v The City of New York
2012 NY Slip Op 31415(U)
May 22, 2012
Sup Ct, New York County
Docket Number: 101689/10
Judge: Michael D. Stallman
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

Index Number : 101689/2010
WHITE, JAMEL
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. 101689/10

MOTION DATE 3/26/12

MOTION SEQ. NO. 002

The following papers, numbered 1 to 5 were read on this motion for summary judgment

Notice of Motion— Affirmation — Exhibits A-E [Affidavit]-G [Affidavit]-I No(s). 14

Answering Affirmation _____ **No(s).** 5

Replying Affirmation — Exhibits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion for summary judgment is decided in accordance with the annexed decision and order.

FILED

MAY 29 2012

NEW YORK
COUNTY CLERK'S OFFICE

U.S. OFFICE
HON. MICHAEL D. STALLMAN

Dated: 6/22/12
New York, New York

_____, J.S.C.

Check one:

☐ CASE DISPOSED

X NON-FINAL DISPOSITION

2. Check if appropriate:..... MOTION IS:

X 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: IAS PART 21**

-----X
JAMEL WHITE,

Plaintiff,

Index No. 101689/10

-v-

Decision and Order

THE CITY OF NEW YORK, THE NEW YORK CITY
TRANSIT AUTHORITY, SHELTER EXPRESS CORP.,
TRANSPORTATION DISPLAYS INCORPORATED,
CBS OUTDOOR GROUP INC., CEMUSA NY, LLC and
CEMUSA, INC.,

Defendants.
-----X

HON. MICHAEL D. STALLMAN, J.:

FILED

MAY 29 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

In this personal injury action arising out of a slip and fall accident near a bus stop and bus shelter, defendants CBS Outdoor Group, Inc. (CBS), and Transportation Displays, Inc. (Transportation Displays) move for summary judgment dismissing the complaint and all cross claims as against them (motion sequence 002) and plaintiff partially opposes the motion. In motion sequence 003, defendant New York City Transit Authority (NYCTA) moves to dismiss the complaint and all cross claims. Plaintiff partially opposes this motion. This decision addresses both motions.

BACKGROUND

On November 21, 2008 at approximately 10:00p.m., plaintiff allegedly slipped and fell on broken glass from a shattered bus stop shelter. The bus stop was located in front of 561 and 563 Lenox Avenue, between West 138th Street and West 139th Street. As a result of the alleged slip and fall, plaintiff sustained injuries. Plaintiff commenced this action against several defendants.

The NYCTA, CBS and Transportation Displays now move for summary judgment dismissing the complaint and any cross claims against them.

DISCUSSION

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made...the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 [1986].)

Motion Sequence 002

CBS and Transportation Displays have met their prima facie burden for judgment as a matter of law. These defendants have submitted evidence that the Franchise Agreement between them and the City for the operation of bus shelters throughout the City ended on June 26, 2006, approximately two years before plaintiff's accident. After that date, defendants CBS and Transportation Displays had no responsibilities, obligations or relationship to the bus stop shelters. “Liability for a dangerous condition on property is predicated upon occupancy, ownership, control or a special use of such premises.” (*Balsam v Delma Engineering Corp.*, 139 AD2d 292, 296 [1st Dept 1988].) CBS and Transportation Displays cannot be held liable for a condition on property it did not occupy, own, control or make special use of.

Plaintiff requests, in limited opposition, that the portion of the motion granting costs and attorney's fees be denied. Regarding attorney's fees, New York State follows the American Rule wherein each party is responsible for its own attorney's fees as incidents of litigation. The American Rule prevents a prevailing party from “recouping legal fees from the losing party ‘except where authorized by statute, agreement or court rule.’” (*Gotham Partners, L.P. v High*

River Ltd. Partnership, 76 AD3d 203 [1st Dept 2010] quoting *U.S. Underwriters Ins. Co. v City Club Hotel, LLC*, 3 NY3d 592, 597 [2004].) Moreover, plaintiff does not offer any support, or indeed any argument in opposition. However, there appears no basis for a denial of costs and disbursements.

Motion Sequence 003

It is well settled that the City, and/ or those with whom it contracted, is responsible for maintaining bus stops and shelters throughout the City; the NYCTA has no responsibility for maintaining bus stop areas or bus shelters. “[P]laintiff failed to state a cause of action to recover damages because of the NYCTA’s failure to properly maintain and/or repair the bus shelter.” (*Blakeney v City of New York*, 222 AD2d 390, 391 [2nd Dept 1995].) Thus, the NYCTA has met its prima facie burden for judgment as a matter of law. Plaintiff has not opposed the portions of the motion which seeks summary judgment for the NYCTA and dismissal of all the cross claims against it.

Plaintiff requests, in limited opposition, that the portion of the motion granting costs and attorney’s fees be denied. Regarding attorney’s fees, New York State follows the American Rule wherein each party is responsible for its own attorney’s fees as incidents of litigation. The American Rule prevents a prevailing party from “recouping legal fees from the losing party ‘except where authorized by statute, agreement or court rule.’” (*Gotham Partners, L.P. v High River Ltd. Partnership*, 76 AD3d 203 [1st Dept 2010] quoting *U.S. Underwriters Ins. Co. v City Club Hotel, LLC*, 3 NY3d 592, 597 [2004].) Moreover, plaintiff does not offer any support, or indeed any argument in opposition. However, there appears to be no basis for denying costs and disbursements.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of defendants CBS OUTDOOR GROUP, INC., and TRANSPORTATION DISPLAYS, INC. for summary judgment is granted and the complaint and all cross claims are dismissed in their entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED that the motion of defendant NEW YORK CITY TRANSIT AUTHORITY to dismiss the complaint herein is granted and the complaint and all cross claims are dismissed in their entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the action is respectfully referred to the Trial Support Office for reassignment to a City Part as the New York City Transit Authority is no longer a party to the action.

Dated: May 28, 2012
New York, NY

ENTER:



J.S.C.

HON. MICHAEL D. STALLMAN

FILED

MAY 29 2012

**NEW YORK
COUNTY CLERK'S OFFICE**