

Lopez v City of New York
2012 NY Slip Op 32475(U)
September 21, 2012
Sup Ct, NY County
Docket Number: 114910/09
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 : 114910/2009
LOPEZ, ROBERTO
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. 114910/09
MOTION DATE 7/13/12
MOTION SEQ. NO. 002

The following papers, numbered 1 to 4 were read on this motion for summary judgment

Notice of Motion— Affirmation — Exhibits A-G [Affidavit] _____ | No(s). 1-3
Answering Affirmation _____ | No(s). 4
Replying Affirmation — Exhibits _____ | No(s). _____

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

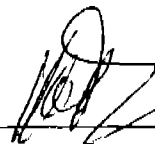
FILED

SEP 27 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

HON. MICHAEL D. STALLMAN

Dated: 9/21/12
New York, New York

 J.S.C.

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

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. Check If 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: IAS PART 21**

-----X
ROBERTO LOPEZ,

Plaintiff,

Index No. 114910/09

-v-

Decision and Order

THE CITY OF NEW YORK, THE NEW YORK CITY
TRANSIT AUTHORITY, CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., CASTEGA-114-116
FULTON STREET, LLC, GALB REALTY ASSOCIATES,
LLC, and 72-78 NASSAU STREET CONDOMINIUM.

Defendants. -----X

FILED

SEP 27 2012

HON. MICHAEL D. STALLMAN, J.:

**NEW YORK
COUNTY CLERK'S OFFICE**

In this personal injury action arising out of a trip and fall accident in front of 39 John Street, New York, New York, defendant Consolidated Edison Company of New York, Inc. (ConEd) moves for summary judgment dismissing the complaint and any and all cross claims against it (motion sequence 002). Plaintiff opposes ConEd's motion. Defendant Galb Realty Associates, LLC (Galb) also moves for summary judgment dismissing the complaint and any and all cross claims as against it (motion sequence 003). Plaintiff and defendant New York City Transit Authority (NYCTA) oppose the motion. This decision addresses both

motions.

BACKGROUND

On July 29, 2008, plaintiff allegedly tripped and fell on a crack in the sidewalk in front of 39 John Street, New York, New York. The crack was allegedly along the perimeter of a sidewalk grating. Plaintiff worked delivering Snapple to various establishments. On the morning of the alleged accident, he was waiting for the truck to pick him up so he could start making deliveries. According to plaintiff, he decided to walk to Burger King to get breakfast, and while walking toward Burger King he tripped and fell, sustaining injuries. Plaintiff commenced suit against the City of New York (City), the New York City Transit Authority (NYCTA), Consolidated Edison Company of New York, Inc. (ConEd), Castega-114-116 Fulton Street, LLC (Castega), Galb Realty Associates, LLC (Galb) and 72-78 Nassau Street Condominium (Nassau).

DISCUSSION

Motion Sequence 002

ConEd has met its prima facie burden for establishing judgment as a matter of law. It has shown that it does not own the subject grate, nor does it have the responsibility for maintaining the subject grate. The NYCTA has admitted ownership and responsibility for maintenance of the subject grate in its Reply to

ConEd's Notice to Admit. (Babinecz Affirmation, Ex. E at ¶¶ 1,3 and Ex. F at ¶¶ 1,3.) Pursuant to 34 RCNY § 2-07 (b) (1) "[t]he owners of covers or gratings on a street are responsible for monitoring the condition of the covers and gratings and the area extending twelve inches outward from the perimeter of the hardware." Moreover, pursuant to 34 RCNY § 2-07 (b) (2) "[t]he owners of covers or gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover or grating." Here, plaintiff allegedly tripped and fell on a crack located on the perimeter of the grating and the NYCTA has admitted ownership of the subject grating. Therefore, as the owners of the grating, the NYCTA is responsible for maintenance and repair of the subject grating and twelve inches around the perimeter of the grating. (*Cruz v New York City Tr. Auth.*, 19 A3d 130 [1st Dept 2005].)

Plaintiff has not demonstrated the existence of a triable issue of fact. Plaintiff argues that NYCTA's Reply to the Notice to Admit is unclear because the NYCTA does not admit that it operated the gratings. However, whether the NYCTA operated the grating is irrelevant because it already admitted to ownership of the grating and pursuant to 34 RCNY § 2-07 (b), it is responsible for the maintenance of the subject grating. Plaintiff further argues that the alleged

accident occurred on the sidewalk, not on the grating. However, photographs attached to ConEd's Notice to Admit show that the crack plaintiff allegedly tripped on was within twelve inches of the perimeter of the grating, in fact, the crack touches the grating. (Babinecz Affirmation, Ex. E.) Therefore, 34 RCNY § 2-07 (b) applies to this area of the sidewalk, and the subject area is the responsibility solely of the NYCTA.

Motion Sequence 003

Galb Realty Associates has met its prima facie burden for establishing judgment as a matter of law. It has shown that it did not own the subject grating and that it was not responsible for maintenance of the subject grating or for the area where plaintiff allegedly tripped. Although § 7-210 of the Administrative Code of the City of New York requires owners of real property within the City to maintain abutting sidewalks in a reasonably safe condition, 34 RCNY § 2-07 places the responsibility for maintenance of gratings and "the area extending twelve inches outward from the perimeter of the cover or grating" on the owners of the grates. The NYCTA has already admitted to ownership of the grates and to the responsibility for the maintenance of the grates. Therefore, it is also responsible for the area of the sidewalk where plaintiff allegedly tripped. "[Section] 7-210 of the Administrative Code of the City of New York does not

impose liability upon a property owner for failure to maintain a sidewalk grate in a reasonably safe condition.” (*Hurley v Related Mgt. Co.*, 74 Ad3d 648, 649 [1st Dept 2010].) Photographs attached to the moving papers show that the area of the sidewalk plaintiff allegedly tripped on is located along the perimeter of the subject grating. (Lambert Affirmation, Ex. G). Therefore, it is the NYCTA’s responsibility, pursuant to 34 RCNY § 2-07. Furthermore, plaintiff testified at his statutory hearing that the crack was about four inches wide and about a foot long. (Id., Ex. F at 34.) Therefore, the size of the crack also places it within the NYCTA’s area of responsibility.

Plaintiff and defendant NYCTA have not demonstrated the existence of a triable issue of fact. Plaintiff objects to defendant Galb Realty’s motion on the same grounds that it objects to defendant ConEd’s motion. Defendant NYCTA adopts all of plaintiff’s arguments in opposition. However, those arguments fail to establish any triable issue of fact sufficient to defeat summary judgment for defendant Galb Realty. As stated above, the Reply to the Notice to Admit is not unclear, and whether the NYCTA operated the subject grating is irrelevant because the NYCTA admitted to ownership of the grate.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of defendant CONSOLIDATED EDISON COMPANY OF NEW YORK, INC for summary judgment is granted and the complaint, and any 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 it is further

ORDERED that the motion of defendant GALB REALTY ASSOCIATES, LLC for summary judgment is granted and the complaint, and any 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 it is further

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

ORDERED that the Clerk is directed to enter judgment in defendants' favor accordingly.

FILED

SEP 27 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: September 21, 2012
New York, NY

ENTER:

J.S.C.

HON. MICHAEL D. STALLMAN