

Vargas v Coral Broome St. LLC

2014 NY Slip Op 30670(U)

March 13, 2014

Sup Ct, New York County

Docket Number: 155429/2013

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X
ALPHONSO VARGAS,

Plaintiff,

-against-

DECISION/ORDER
Index No. 155429/2013
Seq. No. 001

CORAL BROOME STREET LLC, CORAL REALTY,
LLC, CORAL REALTY MANAGEMENT, LLC,
THE CITY OF NEW YORK, and
NEW YORK UNIVERSITY,

Defendants.

-----X
KATHRYN E. FREED, J.S.C:

RECITATION, AS REQUIRED BY CPLR2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ATTACHED.....	1-2(Exs. A-N)
ORDER TO SHOW CAUSE.....
ANSWERING AFFIDAVITS.....3.....
REPLYING AFFIDAVITS.....

UPON THE FORGOING CITED PAPERS, THIS DECISION/ORDER OF THE MOTION IS AS FOLLOWS:

Defendant The City Of New York moves for an Order, pursuant to CPLR 3211(a)(7), dismissing the complaint and all cross-claims against it, or in the alternative, pursuant to CPLR 3212, granting it summary judgment dismissing the complaint and all cross-claims against it. No opposition has been submitted by any other party, although defendants Coral Broome Street LLC, Coral Realty, LLC, and Coral Realty Management, LLC submit a "Response to [the City's] Motion for Summary Judgment" in which they simply state that they do not oppose the City's application.

After a review of the papers presented, all relevant statutes and case law, the Court **grants** the City's motion.

Factual and Procedural Background:

Plaintiff seeks monetary damages for personal injuries allegedly sustained on January 28, 2013, when he fell on a sidewalk due to an accumulation of snow and ice. On or about April 26, 2013, plaintiff filed a notice of claim against the City, alleging that the accident occurred due to snow and ice on the sidewalk “at or near the rear of 400 Broome Street” in New York County. On or about June 13, 2013, plaintiff commenced an action against the City and Coral Broome Street LLC alleging that he was injured due to a dangerous condition on the sidewalk “at 100 Kenmare Street, known as the rear of 400 Broome Street” in Manhattan. He subsequently served an amended complaint naming as defendants the City, Coral Broome Street LLC, Coral Realty, LLC, and Coral Realty Management, LLC (hereinafter collectively “the Coral defendants”), and New York University (“NYU”). The City and Coral defendants joined issue by service of their answers to plaintiff’s amended complaint, in which they denied all allegations of wrongdoing. The Coral defendants also asserted cross-claims against the City and NYU for contribution and common-law indemnification. The City represents that NYU has appeared in this action but has yet to answer.

The City’s Argument:

The City argues that it is entitled to summary judgment dismissing the complaint and all cross-claims against it pursuant to section §7-210 of the Administrative Code of the City of New York. It asserts that, pursuant to this statute, it may shift liability for injuries arising from a defective condition on a sidewalk in front of certain properties to abutting property owners, and that the property in question in this matter does not fall within any of the exemptions set forth in the statute.

The City also argues that its motions for summary judgment pursuant to Administrative Code 7-210

in cases involving sidewalk snow and ice removal are routinely granted. The City further asserts that there is no evidence that it caused or created the alleged defect or made special use of the subject location.

Conclusions of Law:

“The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law.” *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 (1st Dept. 2007), *citing Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of material fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1989). A defendant moving for summary judgment in a slip and fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. *See Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837 (1986).

Here, plaintiff alleges in his notice of claim that he was injured due to snow and ice on the sidewalk “at or near the rear of 400 Broome Street” in New York County. He alleges in his amended complaint that he slipped and fell “at 100 Kenmare Street, known as the rear of 400 Broome Street” in Manhattan.

Administrative Code of the City of New York § 7-210 provides, in pertinent part, that:

b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This subdivision shall not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

c. Notwithstanding any other provisions of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two-, or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.

In support of its position, the City submits the affirmation of David C. Atik, an employee of the City's Department of Finance ("DOF"). In his affirmation, Mr. Atik states that the DOF maintains and operates a Real Property Assessment Bureau database ("RPAD"). The database contains information regarding property ownership and building classification information. Mr. Atik avers that he conducted a search relating to 400 Broome Street and 100 Kenmare Street, New York, New York, and determined that the City was not the owner of that property on the date of the alleged incident and that the premises consisted of a building with 107 apartments.

The City has thus established that it is not the abutting landowner and that the subject premises do not fall within any of the exemptions promulgated by §7-210. Indeed, it is neither a one-, two-, or three- family residential property that is in whole or in part owner-occupied and used exclusively for residential purposes. More importantly, it is not owned by the City. Hence, the City has demonstrated its prima facie entitlement to summary judgment dismissing the complaint and all

cross-claims against it. *See Rodriguez v. City of New York*, 70 A.D.3d 450 (1st Dept. 2010); *Gordy v. City of New York*, 67 A.D.3d 523 (1st Dept. 2009).

Further, since the City submits evidence, in the form of an affidavit of Jeremy Morris of the New York City Department of Sanitation, establishing that it did not undertake any snow or ice removal efforts at the subject premises during the two weeks preceding plaintiff's alleged accident, it has established, *prima facie*, that it did not cause or create the condition which allegedly injured plaintiff. *See Gumbs v Friedman & Simon*, 35 AD3d 362 (2d Dept 2006); *Paula v City of New York*, 249 AD2d 100 (1st Dept 1998). Moreover, there is no allegation by plaintiff that the City made special use of the premises which would impose liability upon it.

Since no party has opposed the motion, and thus no triable issue of fact has been raised (*see Zuckerman v City of New York, supra*, at 562), the City is entitled to the dismissal of the complaint and all cross-claims asserted against it.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by the defendant City of New York is granted and the complaint and all cross-claims against it are hereby severed and dismissed as against said defendant, and the Clerk is directed to enter judgment in favor of said defendant; and it is further,

ORDERED that the remainder of this action shall continue; and it is further

ORDERED that the caption of this action be amended to reflect the dismissal of the City of New York and that all future papers in this action bear the amended caption; and it is further,

ORDERED that counsel for the City of New York shall serve a copy of this order on all other parties, the County Clerk, and the Trial Support Office at 60 Centre Street, Room 158. The County Clerk and the Trial Support Office are hereby directed to mark the court's records to reflect the

change in the caption and the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Any compliance conferences currently scheduled are hereby cancelled; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: March 13, 2014

ENTER:

MAR 13 2014



Hon. Kathryn E. Freed,
J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT