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| <b>Scott v City of New York</b>                                                                                                                                                                                                                                  |
| 2014 NY Slip Op 31128(U)                                                                                                                                                                                                                                         |
| April 29, 2014                                                                                                                                                                                                                                                   |
| Supreme Court, New York County                                                                                                                                                                                                                                   |
| Docket Number: 150925/2012                                                                                                                                                                                                                                       |
| 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  
LOUISE SCOTT,

Plaintiff,

-against-

DECISION/ORDER

Index No. 150925/2012

Seq. No. 001

CITY OF NEW YORK and NEW YORK CITY  
HOUSING AUTHORITY,

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-L) |
| ORDER TO SHOW CAUSE.....                      | .....         |
| ANSWERING AFFIDAVITS.....                     | .....         |
| REPLYING AFFIDAVITS.....                      | .....         |

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

Defendant City Of New York ("the City") moves for an Order, 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. After a review of the papers presented and all relevant statutes and case law, the Court **grants** the City's motion.

**Factual and Procedural Background:**

Plaintiff Louise Scott seeks monetary damages for personal injuries she allegedly sustained on February 2, 2011, when she fell on a sidewalk due to an accumulation of snow and ice. On or about April 27, 2011, plaintiff filed a notice of claim against the City, alleging that the accident

occurred due to an accumulation of snow and ice on the sidewalk “on Amsterdam Avenue adjacent to 55 La Salle Street, and alongside an iron fence at the Grant Houses between West 125<sup>th</sup> Street and La Salle Street, and approximately 25 feet south from the southwest corner of West 125<sup>th</sup> Street and Amsterdam Avenue, County, City and State of New York.”<sup>1</sup> On or about March 18, 2012, plaintiff commenced an action against the City and co-defendant New York City Housing Authority (“NYCHA”) alleging that she was injured due to a dangerous condition on the sidewalk at the above-described location. Ex. B. The City joined issue by service of its answer to the complaint, in which it denied all allegations of wrongdoing and cross-claimed against NYCHA. Ex. C. The City represents that NYCHA has appeared in this action by counsel but that it has not received NYCHA’s answer.

The City now moves for summary judgment dismissing the complaint, as well as all cross claims against it, on the ground that it has no liability for plaintiff’s accident. In support of its motion, the City submits plaintiff’s notice of claim, summons and complaint; its answer; the affidavit of David Atik of the City’s Department of Finance (“DOF”) attesting to the fact that 55 La Salle Street is not a one-, two-, or three-family solely residential property but a residential building with 1,940 apartments (Ex. D); the affidavit of David Schloss, a Senior Title Examiner at the City’s Law Department, attesting to the fact that 55 La Salle Street is owned by the NYCHA and annexing a copy of the deed to the premises (Ex. E); the affidavit of Gregory Rountree, a supervisor employed by the City’s Department of Sanitation (“DOS”) attesting to the fact that the City did not perform any snow or ice removal from the sidewalk adjacent to 55 La Salle Street between January 19 and February 2, 2011 (Ex. L); and several judicial opinions dismissing “ice and snow” cases against the City. Exs. F-K.

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<sup>1</sup>All references are to the exhibits annexed to the City’s motion.

**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 an abutting property owner, 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 (1<sup>st</sup> 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).

Here, plaintiff alleges in her notice of claim that she was injured due to snow and ice on the sidewalk “on Amsterdam Avenue adjacent to 55 La Salle Street, and alongside an iron fence at the Grant Houses between West 125<sup>th</sup> Street and La Salle Street, and approximately 25 feet south from the southwest corner of West 125<sup>th</sup> Street and Amsterdam Avenue, County, City and State of New

York..."

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.

As noted above, the City submits the affirmation of David Atik of the City's DOF. Atik states that the DOF maintains and operates a Real Property Assessment Bureau database containing information regarding property ownership and building classification information. Atik avers that he conducted a search relating to 55 La Salle Street 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 1,940 apartments. Ex. D. Further, the City submits the affidavit of David Schloss, a Senior Title Examiner at its Law Department, who attests, based on a deed annexed to his affidavit, that the NYCHA, and not the City, owned 55 La Salle Street as of the date of the alleged incident. Ex. E.

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 (1<sup>st</sup> Dept. 2010); *Gordy v. City of New York*, 67 A.D.3d 523 (1<sup>st</sup> Dept. 2009).

Further, since the City submits evidence, in the form of an affidavit of Gregory Rountree of the DOS 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 (1<sup>st</sup> 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,

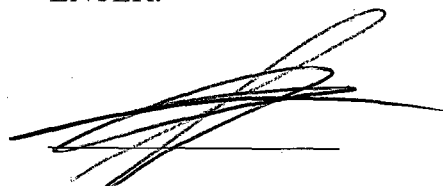
ORDERED that counsel for the City of New York shall serve a copy of this order on all other parties, the County Clerk, and the Trial Support Office at 60 Centre Street, Room 158, and the County Clerk and the Trial Support Office are hereby directed to mark the court's records to reflect the change in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

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

DATED: April 29, 2014

APR 29 2014

ENTER:

A handwritten signature in black ink, appearing to read 'Kathryn E. Freed', written over a horizontal line.

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