

King v City of New York
2014 NY Slip Op 31428(U)
May 22, 2014
Sup Ct, New York County
Docket Number: 152091/2013
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

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DENISE KING,

Plaintiff,

-against-

DECISION/ORDER
Index No. 152091/2013
Seq. No. 003

THE CITY OF NEW YORK, TRINITY NYC HOTEL,
LLC, and ANTHONY T. RINALDI, LLC,

Defendants.

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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-I)
ORDER TO SHOW CAUSE.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
OTHER.....

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

Defendant The 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, all relevant statutes and case law, the Court **grants** the motion.

Factual and Procedural Background:

Plaintiff seeks monetary damages for personal injuries allegedly sustained on April 7, 2012, when she fell on a defectively maintained sidewalk located in front of 50 Trinity Place in Manhattan.

Consequently, she filed a notice of claim on or about June 28, 2012, alleging that the accident occurred at 50 Trinity Place due to the negligence of the City in maintaining the sidewalk. Plaintiff then commenced this action by filing a summons and complaint on or about March 7, 2013. In her complaint, she alleged that she was injured in front of 50 Trinity Place due to the negligence of the defendants in maintaining the sidewalk. On or about April 10, 2013, the City served its verified answer denying all substantive allegations of wrongdoing. In her bill of particulars and at her 50-h hearing, plaintiff again maintained that she was injured on the sidewalk in front of 50 Trinity Place.

The City now moves for summary judgment dismissing all claims against it. In support of the motion, the City submits an attorney affirmation, the notice of claim, the pleadings, the bill of particulars, and plaintiff's 50-h testimony. Further, the City submits the affirmation of David C. Atik, an attorney employed by the City's Department of Finance ("the DOF"). In his affirmation, Atik states that the DOF maintains and operates the Real Property Assessment Bureau ("RPAD") database. The information contained in said database includes information regarding property ownership and building classification information. Mr. Atik avers that he conducted a search of the RPAD database relating to 50 Trinity Place and determined that the City was and is not the owner of this particular property. The search further revealed that the property is not a one-, two-, or three-family residential property that is in whole or in part owner-occupied and used exclusively for residential purposes.

The City's Argument:

The City argues that its motion for summary judgment dismissing all claims against it must be granted pursuant to section §7-210 of the Administrative Code of the City of New York. It claims that it is not liable for plaintiff's alleged injuries because §7-210 shifts liability for injuries

emanating from defective sidewalk conditions to abutting property owners, and that none of the exemptions set forth in that statute apply here. Specifically, the City asserts that the affidavit of Paul Cividanes, a paralegal at its Law Department, which is submitted in support of its motion, establishes that a search of its records revealed that neither the City nor any of its contractors worked on the said sidewalk during the two year period preceding the alleged incident. Thus, maintains the City, it did not create the alleged condition. Finally, the City asserts that plaintiff failed to assert in her notice of claim that the City made special use of the sidewalk, which special use could subject it to liability, and that, in any event, the City made no special use of the sidewalk.

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). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied. See *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 (1978); *Grossman v. Amalgamated Hous. Corp.*, 298 A.D.2d 224 (1st Dept. 2002).

As noted above, plaintiff has consistently alleged that she fell on the sidewalk in front 50 Trinity Place 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.

Here, by submitting Atik's affirmation, the City has established its prima facie entitlement to summary judgment dismissing the claims against it by demonstrating that it did not own 50 Trinity Place and that, since the premises were not a one-, two-, or three- family residential property in whole or in part owner-occupied and used exclusively for residential purposes, the premises did not fall within this exception to § 7-210. *See Nicoletti v. City of New York*, 77 AD3d 715 (2d Dept. 2010); *Gordy v. City of New York*, 67 AD3d 523 (1st Dept. 2009); *Rodriguez v. City of New York*, 70 AD3d 450 (1st Dept. 2010). Since this motion is unopposed, no issue of fact was raised regarding whether the premises fell within this exception.

Additionally, the affidavit of Civitanes established that the City did not cause or create the alleged defect. Since there is no opposition to the City's motion, no issue of fact has been raised regarding whether the City somehow caused or created the alleged defect or hazard through an affirmative act of negligence, which could have triggered an exception to § 7-210. *See Yarborough v. City of New York*, 10 NY3d 726 (2008); *Hammond v. City of New York*, 100 AD3d 563 (1st Dept. 2012). Therefore, dismissal of the instant claim is warranted. *See Rodriguez v. City of New York*, *supra*.

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

ORDERED that the motion by defendant The City of New York for summary judgment is granted and the complaint and any cross-claims 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 caption is amended accordingly; and it is further,

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

ORDERED that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Counsel for the said defendant movant shall serve a copy of this order on all other parties and on the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled; and it is further,

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

ENTER:

DATED: May 22, 2014



Hon. Kathryn E. Freed
J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**