SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN *Justice* PART 21

Index Number : 100406/2012
RICHARDSON, CHERI
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 004
SUMMARY JUDGMENT

INDEX NO. 100406/12
MOTION DATE 4/14/14
MOTION SEQ. NO. 004

The following papers, numbered 1 to 14, were read on this motion for summary judgment

Notice of Motion —Affidavit of Service; Affirmation — Exhibits A-S	No(s). 1-2; 3
Notice of Cross Motion —Affirmation—Affidavit of Service — Exhibits A-F	No(s). 4-6
Affirmation in Opposition —Affidavit of Service	No(s). 7-8; 9-10
Reply Affirmation —Affidavit of Service; Reply Affirmation —Affidavit of Service	No(s). 11-12; 13-14

Upon the foregoing papers, this motion for summary judgment and cross motion for summary judgment are decided in accordance with the annexed memorandum decision and order.

Dated: 7/31/14
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

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CHERI RICHARDSON,

Plaintiff,

- against -

Index No. 100406/2012

THE CITY OF NEW YORK; ROOSEVELT ISLAND OPERATING CORPORATION; NEW YORK CITY TRANSIT AUTHORITY; METROPOLITAN TRANSPORTATION AUTHORITY; MTA BUS COMPANY; URBAN DEVELOPMENT CORPORATION (UDC), d/b/a EMPIRE STATE DEVELOPMENT CORPORATION; and EMPIRE STATE DEVELOPMENT CORORATION,

Decision and Order

Defendants.

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HON. MICHAEL D. STALLMAN, J.:

In this action, plaintiff alleges that, on July 12, 2011, at approximately 5:10 p.m., she twisted her left foot due to a bump in the street while she walking towards a Q102 bus, which had stopped several feet away from the curb in front of Coler Hospital on Roosevelt Island.

Defendants City of New York, Roosevelt Island Operating Corporation (RIOC), New York State Urban Development Corporation sued herein as Urban Development Corporation (UDC) d/b/a Empire State Development

Corporation, and Empire State Development Corporation (EDC) (collective, the City defendants) move for summary judgment dismissing the action and all cross claims as against them. Defendant MTA Bus Company cross-moves for summary judgment dismissing the complaint and all cross claims as against it, based on stills taken from video footage of the alleged incident. Plaintiff opposes both the motion and cross motion.

BACKGROUND

Plaintiff testified at her deposition that, on July 12, 2011, she was working at Coler Memorial Hospital on Roosevelt Island. (Berkowitz Affirm., Ex L [Richardson EBT], at 19.) According to plaintiff, at 5:00 p.m., she left the building and waited for a bus at a bus stop in front of the hospital. (*Id.* at 22.) Plaintiff testified as follows:

> "A. The bus pulled up and I had to walk to the bus to get on it.
>
> * * *
>
> Q. Can you tell me what happened?
> A. I walked from the curb to the bus and my foot twisted.
> Q. Is there anything that caused your foot to twist?
> A. The bump in the street.
> Q. Which foot twisted?
> A. My left.
> Q. How far away was this bump located from the curb?
> A. About six feet.
> Q. Can you tell me how far away the bus pulled up from the curb?
> A. About six feet or six-and-a-half.
>
> * * *
>
> Q. Did you fall as a result of twisting your left foot?
> A. No.
> Q. What happened to your body?

A. I stumbled to the side.
Q. Which side?
A. My left.
Q. Then what happened? . . .
A. I caught my balance by holding onto the bus as I was getting on."

(*Id.* at 23-25, 32-33.)

The notices of claim state that the location of the incident was "on the roadway of the Q102 bus stop, located in front of Coler Hospital, 1 Main Street, Roosevelt Island, New York." (Berkowitz Affirm., Exs A, B.) Plaintiff also testified at her deposition that the address of Coler Memorial Hospital was "1 Main Street." (Richardson EBT, at 15.) An incident report by hospital police states that the location of incident was "OUTSIDE ON STREET IN FRONT OF 900 MAIN STREET." (Tolchin Opp. Affirm. to Cross Motion, Ex D.) Santo Verta, a project manager in the engineering department of the RIOC, testified at his deposition that Coler Hospital and Goldwater Hospital are both located on Main Street. (Berkowitz Affirm., Ex M, at 8-9.) When asked about the address of Coler Hospital, Verta testified, "Coler is 900. And Goldwater is 1." (*Id.* at 9.)

DISCUSSION

The standards for summary judgment are well-settled.

"On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party

> has tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact, and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action. The moving party's [f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, regardless of the sufficiency of the opposing papers."

(*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal citations and quotation marks omitted].)

The City defendants move for summary judgment dismissing the complaint and cross claims against them on several grounds. First, they assert that UDC and ESDC did not own, operate, control or maintain the roadway on the date of the alleged incident. They further assert that the portion of the roadway in front of Coler Hospital is owned by the City, not RIOC. Finally, the City defendants maintain that the City did not have any prior written notice of the alleged roadway defect.

UDC, ESDC, and RIOC are entitled to summary judgment dismissing the complaint and all cross claims against them. As the City defendants indicate, the City leased virtually all of Roosevelt Island to UDC for a term of 99 years in 1969. (Berkowitz Affirm., Ex Q [Wynn Aff.] ¶ 5; *see also* Berkowitz Affirm., Ex N [Lease].) "[I]n 1984, the New York State Legislature enacted the Roosevelt Island Operating Corporation Act (the "RIOC Act," McKinney's Unconsolidated Laws §§ 6385, et seq.), which created the Roosevelt Island

Operating Corporation ("RIOC"), to which UDC transferred all of its powers and obligations under the Lease." (*Roosevelt Islanders for Responsible Southtown Dev. v Roosevelt Is. Operating Corp.*, 291 AD2d 40, 43-44 [1st Dept 2001].) However, according to Schedule 1 of the lease, excepted from the lease were those lands set forth in Annex III and Annex IV of the lease, i.e., Goldwater Hospital and Coler Hospital. (Berkowitz Affirm., Ex N [Lease].)

Thus, the City defendants have demonstrated that the City, and not the UDC, ESDC, or RIOC had duty to maintain the portion of the roadway in front of Coler Hospital where the alleged incident occurred.

Plaintiff fails to raise a triable issue of fact warranting denial of summary judgment to these defendants. Plaintiff raised no argument in opposition to summary judgment dismissing the complaint as against UDC and ESDC. Plaintiff argues that the deposition of Santo Verta, who testified on behalf of RIOC, was self-serving. However, plaintiff does not claim that the area where plaintiff allegedly fell was located outside of the areas of Roosevelt Island that the City had not leased to RIOC, i.e., the areas of Goldwater Hospital and Coler Hospital described in Annex III and Annex IV of the lease.

Therefore, UDC, ESDC, and RIOC are entitled to summary judgment dismissing the complaint and cross claims as against them. Dismissal of the complaint as to these defendants necessarily results in dismissal of these defendants' cross claims for common-law negligence and contribution against the other remaining co-defendants.

Summary judgment is denied as to the City. In support of their motion, the City defendants submitted records that were purportedly from a roadway search conducted in front of 1 Main Street on Roosevelt Island. However, the record before this Court contains conflicting information as to the location of alleged incident.

Plaintiff herself stated in the notices of claim and at her deposition that she fell in front of Coler Hospital, and that the location of the occurrence was 1 Main Street on Roosevelt Island. However, Verta testified that 1 Main Street is the location of the Goldwater campus, and that 900 Main Street is the location of the Coler campus. Meanwhile, an incident report by hospital police indicates the location of the occurrence was in front of 900 Main Street.

Because it is unclear from the record whether the incident occurred in the roadway in front of 900 Main Street or in the roadway front of 1 Main Street, it cannot be determined from this record that the roadway search for

defects in front of 1 Main Street satisfied the City defendants' prima facie burden of establishing lack of prior written notice required under Administrative Code of the City of New York § 7-201 (c). Therefore, summary judgment is denied as to the City.

Turning to the MTA Bus Company's cross motion, plaintiff argues initially that the cross motion was improperly brought, because the MTA Bus Company seeks relief from plaintiff, a nonmoving party. However, the City defendants asserted cross claims against MTA Bus Company, and MTA Bus Company also seeks summary judgment dismissing all cross claims. Because the MTA Bus Company seeks affirmative relief against moving parties, as well as from a non-moving party, the MTA Bus Company "accordingly properly denominated [its] motion a cross motion." (*Darras v Romans*, 85 AD3d 710, 712 [2d Dept 2011].)

> The duty owed by a common carrier to a boarding passenger
>
> > "has been described as 'a reasonably safe, direct entrance onto the vehicle, clear of any dangerous obstruction or defect which would impede that entrance. Stated differently, imposing liability requires a finding that the placement of the bus dictates that the passenger, in order to board the bus, must negotiate a dangerous or defective path.'"

(*Gross v New York City Tr. Auth.*, 256 AD2d 128, 129 [1st Dept 1998], quoting *Blye v Manhattan and Bronx Surface Tr. Operating Auth.*, 124 AD2d 106, 110 [1st Dept 1987], *affd.* 72 NY2d 888 [1988].) "Even when the bus has

come to a stop within steps of a hazardous sidewalk condition, as long as the passenger has safely alighted, the duty of care owed that passenger has been fulfilled, and liability will not extend to the passenger's act of stepping into the structurally defective or perilous spot." (*Blye*, 124 AD2d at 110.) "Generally, the question of whether defendants breached this duty is a question of fact." (*Gross*, 256 AD2d at 129.)

MTA Bus Company contends that stills taken from video footage of the occurrence demonstrate that there was a safe path to the Q102 bus, which plaintiff chose not to take. According to the MTA Bus Company, "if plaintiff had walked along the sidewalk, to the bus door, and then stepped into the street she would not have encountered the mound she encountered while walking on a diagonal route toward the door." (Burbage Affirm. ¶ 16.) Plaintiff asserts that she could not have avoided the roadway defect no matter what angle of approached she pursued.

Having reviewed the stills of the video footage and the video footage itself, which plaintiff submitted, the Court concludes that whether the path to the Q102 bus afforded to plaintiff under the circumstances presented in this matter was reasonably safe is a question for the jury and is certainly not resolved by the record before the Court. (*Gross*, 256 AD2d at 129-130.) Therefore, the MTA Bus Company's cross motion is denied.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion for summary judgment by defendants City of New York, Roosevelt Island Operating Corporation, New York State Urban Development Corporation sued herein as Urban Development Corporation (UDC) d/b/a Empire State Development Corporation, and Empire State Development Corporation is granted in part as follows:

(1) the complaint is dismissed as against defendants Roosevelt Island Operating Corporation, New York State Urban Development Corporation sued herein as Urban Development Corporation (UDC) d/b/a Empire State Development Corporation, and Empire State Development Corporation, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants;

(2) the cross claims by and against these defendants are dismissed;

(3) the motion is otherwise denied; and it is further

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

ORDERED that the cross motion for summary judgment by defendant MTA Bus Company is denied.

Dated: ~~**August**~~ July 31 **, 2014**
New York, New York

ENTER:

J.S.C.