

Jackson v City of New York

2014 NY Slip Op 33321(U)

February 26, 2014

Supreme Court, Bronx County

Docket Number: 310041/09

Judge: Mitchell J. Danziger

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JULIE JACKSON,

Plaintiff(s),

DECISION AND ORDER

Index No: 310041/09

- against -

CITY OF NEW YORK, HELLMAN ELECTRIC
CORPORATION, LIBERTY LINES TRANSIT, INC.,
CIRO MATARAZZO AND WESTCHESTER COUNTY
DEPARTMENT OF TRANSPORTATION,

Defendant(s).

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In this action for alleged personal injuries resulting from the negligent maintenance of traffic and street lights, defendant THE CITY OF NEW YORK (the City) moves for an order pursuant to CPLR § 3212, granting it, *inter alia*, summary judgment as to all claims asserted against it on grounds that (1) the traffic light at or near the location of plaintiff's alleged accident was neither defective nor the proximate cause of plaintiff's accident; and (2) the City did not have any notice of a defective street light at or near the location of plaintiff's accident, nor did the light, even if defective, create a dangerous or hazardous condition. Plaintiff opposes the City's motion to the extent that it seeks summary judgment with respect to the claims regarding the street light. As to those claims, plaintiff alleges that insofar as the street light had been repaired twice prior to plaintiff's accident, questions of fact as to whether it was negligently repaired exist and,

therefore, preclude summary judgment.

For the reasons that follow hereinafter, the City's motion is hereby granted.

The instant action is for alleged personal injuries. Plaintiff's complaint alleges that on June 8, 2009, at the intersection of West 254th Street and Broadway, Bronx, NY, she was injured when the bus within which she was a passenger stopped abruptly, hit a pedestrian, and caused her to sustain injuries. Plaintiff alleges, *inter alia*, that the City was negligent in failing to properly maintain the traffic light located at the situs of the accident and that, *inter alia*, this negligence caused the accident. Within her bill of particulars and as against the City, plaintiff further alleges that the City was also negligent in failing to properly maintain the street lights at or near the location of the accident and that such negligence, *inter alia*, also caused the accident.

At her GML 50-h hearing, which transcript the City submits, plaintiff testified that on June 8, 2009, at approximately 11pm, she was a passenger on a Liberty Lines Bus (Liberty), traveling north on Broadway. The bus came to a violent and abrupt stop at an intersection causing plaintiff to be propelled from her seat. Plaintiff later discovered that the bus hit a pedestrian. Defendant CIRO MATARAZZO (Ciro), whose deposition transcript is

submitted by the City, testified that

on June 8, 2009, he was employed as a bus driver for Liberty. While operating his bus northbound on Broadway, he came to a stop at the traffic light located at the intersection of Broadway and West 254th Street, Bronx, NY. He stopped because the light was red. The light turned green and he proceeded through the intersection. Shortly thereafter as he traveled on the right lane of the two northbound lanes for moving traffic, he impacted a pedestrian, who he did not see until the point of impact. While he noticed that one of the street lamps was not illuminated near the location of this accident, he was nevertheless able to see the street as he drove. Margie Jackson (Margie) an employee with the New York City Department of Transportation, and whose deposition transcript was submitted by the City, testified that she performed a search for records pertaining to the street lights located at the intersection of Broadway and West 254th Street. Her search included all records for the street lights at the foregoing location for a period of two months prior to June 8, 2009. Her search revealed that on May 5 and 28, 2009, complaints were made regarding the street lights on the northwest corner of the intersection of Broadway and West 254th Street. The complaints were that the streetlights were out and they were repaired on the same dates the complaints were made. The repairs entailed replacing the bulbs.

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Thus, a defendant seeking summary judgment must establish prima facie entitlement to such relief as a matter of law by affirmatively demonstrating, with evidence, the merits of the claim or defense, and not merely by pointing to gaps in plaintiff's proof (*Mondello v DiStefano*, 16 AD3d 637, 638 [2d Dept 2005]; *Peskin v New York City Transit Authority*, 304 AD2d 634, 634 [2d Dept 2003]). Once movant meets the initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence, generally also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman* at 562).

While a municipality is liable for the failure to maintain its traffic lights in a reasonably safe condition, liability for such failure will only attach if it is proven that the municipality caused the defective condition alleged or had prior notice, actual or constructive, of the same (*Salazar v City of New York*, 104 AD3d 931, 932 [2d Dept 2013]; *Alvarez v Hee Youn Koo*, 16 AD3d 442, 442 [2d Dept 2005]).

Here, to the extent that plaintiff alleges that the City was

negligent in its maintenance of the traffic lights at the intersection of West 254th Street and Broadway, the location of this accident, the City establishes prima facie entitlement to summary judgment by tendering evidence that the relevant traffic control device was working on the date of this accident, such that it was not defective. Ciro, testified that he came to a stop at the traffic light because it was red and proceeded through it after it turned green. Thus, the record establishes that the relevant traffic control device at the relevant intersection was functional. Accordingly, since liability for defective traffic lights is premised on the municipality causing the *defective* condition alleged or having prior notice, actual or constructive, of the alleged *defect*, (*Salazar* at 932; *Alvarez* at 442), here, were the facts evince the absence of a defect, it is axiomatic that the City bears no liability.

Additionally, here the City establishes prima facie entitlement to summary with regard to the claim of a defective traffic light insofar as it establishes that the relevant traffic light had nothing to do with the accident such that any defect alleged could not have proximately caused the accident. Specifically, Ciro testified that the instant accident occurred past the intersection and, thus, the light. Proximate cause, meaning the substantial cause of the events which produced the injury claimed (*Derdiarian v Felix Contracting Corp.*, 51 NY2d 308,

315 [1908]), is essential to liability and, therefore, in order to establish liability, a plaintiff must prove both that a defendant was negligent and that such negligence was the cause of the accident alleged (*Sheehan v City of New York*, 40 NY2d 496, 501 [1976] ["Evidence of negligence is not enough by itself to establish liability. It must also be proved that the negligence was the cause of the event which produced the harm sustained by one who brings the complaint."]; *Lee v New York City Housing Authority*, 803 NYS2d 538, 542-543 [1st Dept 2005]); *Lynn v Lynn*, 216 AD2d 194, 195 [1st Dept 1995]). "[W]here the evidence as to the cause of the accident which injured plaintiff is undisputed, the question as to whether any act or omission of the defendant was a proximate cause thereof is one for the court and not for the jury" (*Lee* at 542). Based on the foregoing, assuming arguendo, that the traffic light was somehow defective, it is clear that such defect was not the proximate cause of the accident because it had absolutely nothing to do with the accident.

With respect to plaintiff's claim that the instant accident was caused by insufficient illumination, namely the City's failure to properly maintain the street lights at the location of this accident, the City establishes prima facie entitlement to summary judgment. It is well settled that a municipality has a duty to maintain its streets in a reasonably safe condition (*Thompson v City of New York*, 78 NY2d 682, 684 [1991]; *Hayden v City of New*

York, 26 AD3d 262, 262 [1st Dept 2006]; *Michetti v City of New York*, 184 AD2d 263, 264 [1st Dept 1992]). However, a municipality need only provide street lighting in certain situations where it "is necessary to keep the street safe, i.e., where there is a defect or some unusual condition rendering the street unsafe to the traveling public" (*Thompson* at 684; *Hayden* at 262; *Michetti* at 264). Thus, "in order to prevail, [] plaintiff [has] to show that the City permitted a dangerous or potentially hazardous condition to exist and cause injury" (*Thompson* at 685). In *Thompson*, for example, the Court of Appeals affirmed the First Department's decision which granted defendant the City of New York's (the City) motion for summary judgment as to plaintiff's claim that the City failed to keep the street lights at or near the location of her accident in reasonably good repair (*id.* at 684-685). The gravamen of the court's decision was that even though the street lamp at the location of her accident was defective, inasmuch as the bulb was not lit,

Plaintiff's claim that a light bulb burned out was not, standing alone, sufficient to establish a cause of action: she was obliged to show that by failing to replace the bulb, the City created a dangerous condition on the Grand Concourse. The most that appears, however, is that the roadway near the intersection of Field Place is large and at times busy--a condition which exists at many city intersections. The mere outage of the streetlight did not render this reasonably safe street dangerous

(*id.*). Should plaintiff establish that the absence of light created a potentially dangerous condition, to find liability the plaintiff must also prove that the municipality had prior actual or constructive notice of the lighting defect alleged (*Silvestri v Village of Bronxville*, 106 AD3d 901, 902 [2d Dept 2013]).

Here, *Ciro's* testimony establishes that despite the fact that one of the street lamps at or near the intersection in question was not functioning, he was nevertheless able to see down Broadway as he traveled thereon. Moreover, neither plaintiff's testimony nor *Ciro's*, establishes, as it must, that absence of light created "a dangerous or potentially hazardous condition" (*Thompson* at 685). In fact, besides the bare allegations in the pleadings, the record is bereft of any evidence that the defective light at this location caused the instant accident (*Rios v City of New York*, 33 AD3d 780, 782 [2d Dept 2006 ["The mere fact that a street light burned out and that the street was dark is not sufficient to render a street dangerous and is not sufficient to establish a cause of action sounding in negligence. . . [Here], there was no testimony indicating that the lack of lighting in any way contributed to the accident. Accordingly, the City's motion to set aside the verdict on the issue of liability insofar as against it and for judgment as a matter of law was properly granted."])). Accordingly, for this reason alone, the City establishes *prima facie* entitlement to summary judgment. However, the City further establishes *prima*

facie entitlement to summary judgment for the additional reason that it had no prior notice that the street light at issue was defective on the date of this accident. Specifically, Margie testified that, that in the two months prior to plaintiff's accident, the City was only aware of two complaints regarding the street lamp. While those complaints predate plaintiff's accident, the most recent prior to her accident, made on May 28, 2009, was repaired that very date. Thereafter, and prior to plaintiff's accident the City had no actual notice of a defect with the traffic lamp, and nothing in the record establishes that the defect with the traffic light, allegedly existing on the date of this accident, predated the accident for a sufficient length of time to charge the City with constructive notice (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986] [A defendant is charged with having constructive notice of a defective condition when said condition is visible, apparent, and exist for a sufficient length of time prior to the happening of an accident to permit the defendant to discover and remedy the same.]).

Plaintiff's opposition fails to raise any material issues of fact sufficient to preclude summary judgment in the City's favor. In fact, plaintiff submits no evidence whatsoever, choosing instead, as is her right, to argue that the City's evidence gives rise to material questions of fact. Seeming to abandon her claim with regard to the traffic light, plaintiff solely argues that the

City is liable for failing to properly maintain the street lamp at the location of her accident. To that end, plaintiff avers that the City negligently created the defective condition at issue because the bulb it installed in the instant lamp, to the extent that it failed twice in one month, was obviously defectively installed. This argument is of course, meritless, because plaintiff offers nothing but speculation in support (*Zuckerman* at 552 ["We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient."]). To be sure, in *Ray v Hertz Corp.* (271 AD2d 374, 375 [1st Dept 200]), the First Department summarily rejected a similar, yet stronger argument, stating that the affidavit from an expert failed to set forth evidentiary facts allowing for the conclusion that the defendant negligently repaired a traffic light prior to plaintiff's accident (*id.*). As is the case here, in *Ray*, one of the defendants sought summary judgment over another arguing that prior repairs to the traffic light were negligently performed and as such the defendant created the defective condition existing at the time of plaintiff's accident. In granting the moving defendant's motion for summary

judgment the Court stated that

[t]he vague allegations asserted therein failed to sufficiently demonstrate that Comstock knew or should have known of any defect in the traffic light. Nor did the [expert's] affidavit set forth an evidentiary basis for concluding that Comstock negligently repaired the light prior to the accident

(*id.*). Here, plaintiff doesn't even proffer an expert's affidavit resorting, instead, to speculation by counsel. It is hereby

ORDERED that the complaint and all cross-claims be dismissed against the City. It is further

ORDERED that City serve a copy of this Decision and Order with Notice of Entry upon all parties within thirty (30) days hereof

Dated : February 26, 2014
Bronx, New York



Mitchell J. Danziger, ASCJ