

Quintana v Basilica of St. Patrick's Old Cathedral

2017 NY Slip Op 32129(U)

October 11, 2017

Supreme Court, New York County

Docket Number: 154369/2015

Judge: William Franc Perry

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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
LUIS QUINTANA,

Plaintiffs,

-against-

Index No.: 154369/2015
Motion Sequence: 001

THE BASILICA OF ST. PATRICK'S OLD
CATHEDRAL and THE CITY OF NEW YORK,

Defendants.

-----X
HON. W. FRANC PERRY, J.:

Plaintiff seeks compensation for injuries that he alleges he sustained on a defective sidewalk. Defendants, The City of New York (the City) and The Basilica of St Patrick's Old Cathedral (the Basilica), separately, move for summary judgment dismissing the complaint (CPLR 3212).

Plaintiff alleges that, on March 14, 2014, he twisted his foot due to a sidewalk defect on the northwest corner of Mulberry and Prince streets in Manhattan. Plaintiff complains that the incident caused him to incur injuries, including a foot fracture. He also alleges that the City and the Basilica were negligent in failing to repair or warn plaintiff of the defective condition, or to otherwise protect plaintiff from the condition.

The summary judgment standard is well settled. The movant must tender evidence, by proof in admissible form, eliminating material issues of fact so as to "warrant the court as a matter of law in directing judgment in favor of" that party (CPLR 3212 [b]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med.*

Ctr., 64 NY2d 851, 853 [1985]). If the moving burden is met, to defeat summary judgment “the opposing party must show facts sufficient to require a trial of any issue of fact” (*Zuckerman*, 49 NY2d at 562 [citation and internal quotation marks omitted]).

The Basilica's Cross Motion

In moving for summary judgment, the Basilica argues that it is not liable for plaintiff's injury because, at his deposition, plaintiff identified a pedestrian ramp as the area on the sidewalk where he was injured, as opposed to a sidewalk flag. Pursuant to the Administrative Code of the City of New York (Administrative Code) § 7-210,

“New York City landowners are responsible for maintaining sidewalk flags that about their property, [but,] a landowner is not liable for a defect in a pedestrian ramp leading from the street onto a sidewalk unless the landowner created the defect or the ramp was constructed for its special use”

(*Gary v 101 Owners Corp.*, 89 AD3d 627, 627 [1st Dept 2011] [internal citations omitted]; see also *Ortiz v City of New York*, 67 AD3d 21, 27 [1st Dept 2009], *rev'd on other grounds* 14 NY3d 779 [2010]). While, generally, it is the City's duty to maintain pedestrian ramps commonly found on sidewalk corners, “section 7-210 (a) of the Administrative Code . . . expressly defines the sidewalk to include the intersection quadrant for corner property” that surrounds the ramp (*Puello v Georges Units, LLC*, 146 AD3d 561, 562 [1st Dept 2017] [internal quotation marks and citation omitted]).

In moving, the Basilica submits three photographs marked at plaintiff's deposition. Plaintiff was asked to circle the area on the photograph that best demonstrated where he had the accident. In response, plaintiff circled an area on a photograph that showed a close-up view of a portion of pavement (*Morello* affirmation, exhibit F). The Basilica contends that this photo shows that plaintiff circled a defect on the street corner's pedestrian ramp.

Indeed, the picture shows pavement with what appears to be diagonal marks, which could indicate that it is part of the pedestrian ramp. However, viewing the three photographs of the site together, it appears that the defect may be on a sidewalk flag, close to the pedestrian ramp, as the photograph, marked as exhibit C at plaintiff's deposition, appears to show a defect outside of the ramp, on the flag. Viewing this evidence in a light favorable to plaintiffs, the nonmoving parties, as is required on this motion (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]), Basilica's cross motion is denied as there is a fact question raised as to the location of the defect.¹

The City's Motion

In moving for summary judgment, the City argues that, pursuant to Administrative Code § 7-210, the Basilica is liable for any accident caused by the failure to maintain the sidewalk. The City also argues that it is not liable, because it did not cause, create or have prior written notice of the alleged defective condition.

To demonstrate its lack of notice, the City provides sworn testimony of a records searcher employed by the City, and copies of records retrieved by the City, concerning the corner where plaintiff alleges that the incident occurred. These records were exchanged in discovery. The City also provides the affidavits of City employees concerning the record search performed. The City argues that this evidence demonstrates that it did not have written notice. Concerning such notice, it is well settled that:

“[w]here the City establishes that it lacked prior written notice under the Pothole Law, the burden shifts to the plaintiff to demonstrate the applicability of one of

¹ The City argues that the Basilica did not move for summary judgment, but the record includes the Basilica's notice for the relief discussed here (*see* NYSCEF document number 32).

two recognized exceptions to the rule—that the municipality affirmatively created the defect through an act of negligence or that a special use resulted in a special benefit to the locality. Additionally, the affirmative negligence exception is limited to work by the City that immediately results in the existence of a dangerous condition”

(*Yarborough v City of New York*, 10 NY3d 726, 728 [2008] [internal quotation marks and citation omitted]). The evidence the City submits is sufficient to meet its burden concerning the absence of notice.

Plaintiff does not oppose the City’s motion. The Basilica opposes the motion, arguing that, as discussed above, plaintiff indicated, on the photograph, that he fell on the pedestrian ramp. Even assuming, arguendo, that plaintiff fell on the pedestrian ramp, the Basilica does not raise a fact issue concerning prior written notice to the City to rebut the City’s showing. In fact, the Basilica does not oppose that portion of the City’s motion. Consequently, the City’s motion is granted.

Conclusion

In light of the foregoing, it is

ORDERED that The City of New York’s motion for summary judgment, Motion Sequence No. 001, is granted and the complaint and any cross claims are dismissed as to this defendant without costs and disbursements; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the action is severed as to defendant the City of New York, and is continued as to the remaining defendant; and it is further

ORDERED that The Basilica of St Patrick's Old Cathedral's cross motion for summary judgment dismissing the complaint, Motion Sequence No. 001, is denied; and it is further;

ORDERED that the caption is amended accordingly; and it is further,

ORDERED that Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Counsel for said moving defendant shall serve a copy of this Order on all other parties and on the Trial Support Office, 60 Centre Street.

Any relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the decision and order of the Court.

This constitutes the decision and Order of this Court.

Dated: October 11, 2017
New York, New York



HON. W. FRANC PERRY, J.S.C.