

<b>Gil v City of New York</b>
2018 NY Slip Op 32020(U)
July 17, 2018
Supreme Court, New York County
Docket Number: 155166/2014
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA A. SOKOLOFF PART 21

Justice

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MERCEDES GIL,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
TRANSPORTATION AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY D/B/A MTA, SOHO AOA
OWNER, LLC, STELLAR MANAGEMENT, INC.

Defendant.

INDEX NO. 155166/2014

MOTION DATE 04/12/2018

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 92 were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is

In this action by Plaintiff Mercedes Gil to recover damages for personal injury, Defendant New York City moves for summary judgment and Plaintiff cross-moves for summary judgment.

On April 26, 2013, Plaintiff sustained injury when she tripped on a metal stump protruding 6-12 inches from the sidewalk as she exited the C/E subway station on the north side of Spring Street near its intersection with Sixth Avenue. Plaintiff claims that the City, through its agency, Department of Transportation (DOT), negligently permitted a dangerous condition to exist by not removing or repairing the stump of a traffic sign post.

The City maintains that it cannot be held liable for the allegedly defective condition in the absence of prior written notice pursuant to Section 7-201(c)(2) of the Administrative Code of the City of New York. That section provides in pertinent part:

No civil action shall be maintained against the city for damage to property or injury to person ... sustained in consequence of any street, highway, ... sidewalk or crosswalk, ... including any encumbrances ... being out of repair, unsafe, dangerous or obstructed,

unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any ... department authorized ... to receive such notice, or where there was previous injury to person or property as a result of the existence of the ... condition, and written notice thereof was given to a city agency, or there was written acknowledgement from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

In support of dismissal, the City submitted the affidavit of Department of Transportation (DOT) employee and record searcher, Nelson Nguy, who performed a search for DOT records for a two-year period prior to and including date of accident. The search revealed no complaints or records of repair requests that would have provided notice to the City of a defect or dangerous condition at the subject location.

A search was also conducted by DOT employee, William Lee, the Borough Engineer of the Manhattan sign shop division, for all installation, removal, maintenance and repair records related to signs located at Spring Street between Sixth Avenue and Varick Street. The search revealed that, pursuant to a Community Board # 2 Resolution dated January 19, 2012, DOT installed a "No Standing Except Trucks Loading and Unloading 8am-6pm Monday to Friday" regulation ("No Standing sign") on the north side of Spring Street between Varick Street and Sixth Avenue on March 20, 2012. A review of the search results failed to reveal any evidence that the City either created or had prior written notice of the subject condition.

DOT employee, Joseph Farina, the Deputy Borough Engineer of the Manhattan sign shop division, testified to the results of the signs record search and explained that his department responds to service requests for repairs. Any complaint related to signs, whether generated through the Agency Response Tracking System (ARTS) or 311, are eventually routed to his department, the borough of engineering. A complaint about a damaged sign generates a repair

order which is dated as of the date that the Borough Engineering Department is notified. After a sign is repaired, the order is closed out.

Mr. Farina testified that DOT's installation and removal procedure of sign posts, or drive rails, involve either completely drilling out the sign post, or cutting it flush with the sidewalk, then pounding it below the plane of the sidewalk surface. According to Mr. Farina, because the subject stump did not have a straight edge, which it does when cut, the pole had to have been struck, noting that the poles are designed to break when struck at a high volume of speed. Mr. Farina reviewed the record search by Borough Engineer Lee and testified that he found no records for repair of the subject sign post in the two years prior to the accident.

Administrative Code of the City of New York § 7-201(c) limits the City's duty of care over municipal streets and sidewalks by imposing liability only for those defects or hazardous conditions which its officials have been actually notified exist at a specified location (*Katz v City of New York*, 87 NY2d 241 [1995]). Prior written notice of a defect is a condition precedent which a plaintiff is required to plead and prove to maintain an action against the City (*Id.* at 243). The purpose of the prior written notice requirement is to place a municipality on notice that there is a defective condition on publicly-owned property which, if left unattended, could result in injury (*Gorman v Town of Huntington*, 12 NY3d 275, 279 [2009]).

The only exception applicable here is if the City created the defect through an affirmative act of negligence that resulted in an immediately dangerous condition (*Vega v City of New York*, 88 AD3d 497 [1st Dept 2011]).

Whereas Plaintiff bears the burden of establishing at trial that City had written notice (*Katz v City of New York*, 87 NY2d 241, 244 [1995]), prior to trial, it is the City, as movant, which must establish an absence of written notice. If the City does so, the burden shifts to

Plaintiff to establish that it caused or created the dangerous condition (*Yarborough v City of New York*, 10 NY3d 726, 728 [2008]).

Plaintiff's assertion that the City negligently created the dangerous condition that caused her trip and injury when it installed the no Standing sign on March 20, 2012 is speculative and wholly without support and thus she has failed to make a *prima facie* showing of entitlement to judgment as a matter of law insufficient (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [NY 1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

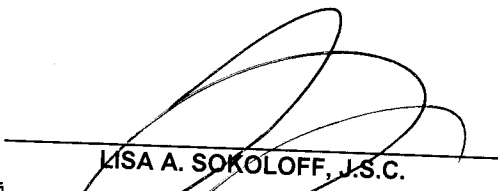
Here, the City established, *prima facie*, that it did not have prior written notice of the sidewalk sign post stump/protrusion upon which Plaintiff tripped and fell. In opposition, Plaintiff Gil has failed to raise a triable issue of fact as to whether the City did have prior written notice of the existence of a defective, unsafe or dangerous condition on the sidewalk (*See Pena v City of Yonkers*, 82 AD3d 728 [2d Dept 2011] [plaintiff, who fell on piece of metal protruding from sidewalk, failed to raise triable issue as she only offered speculation that defendant created defect]).

Accordingly, it is

ORDERED, that Defendant City's motion for summary judgment dismissing the complaint and all-cross-claims against the City is granted. Plaintiff's cross-motion for summary judgment is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected.

7/17/2018  
DATE

  
LISA A. SOKOLOFF, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: