

Alberts v City of New York

2020 NY Slip Op 30188(U)

January 21, 2020

Supreme Court, New York County

Docket Number: 155168/2017

Judge: Laurence L. Love

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62
Justice

-----X
DEBRA ALBERTS, INDEX NO. 155168/2017
Plaintiff, MOTION DATE 11/07/2019
MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, CITYBRIDGE LLC, TIME WARNER
CABLE

DECISION + ORDER ON
MOTION

Defendant.
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents,

This motion seeks an Order for summary judgment, CPLR 3212(b), and dismissal of plaintiff Debra Alberts' Complaint against defendant Citybridge LLC; and for summary judgment and dismissal of all cross-claims for contribution, contractual indemnification, common law indemnification, and/or breach of contract against Citybridge LLC.

Plaintiff alleges personal injuries sustained on March 1, 2017, as a result of an alleged trip and fall in the crosswalk/roadway on the northeast corner of Broadway and West 56th Street, New York, New York. Plaintiff's complaint alleges injuries sustained due to the carelessness, recklessness, and negligence of defendants in the ownership, operation, management, maintenance, control, repair, supervision, and inspection of the roadway and/or sewer at the aforesaid premises.

CPLR 3212(b) states, that "the [summary] motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant

the court as a matter of law in directing judgment in favor of any party.” “To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented.” (*Glick & Dolleck, Inc v Tri-Pac Export Corp*, 22 NY2d 439 [1968]).

Plaintiff commenced this action against the City of New York by the service and filing of the Summons and Complaint on or about June 6, 2017. Plaintiff served a supplemental summons and amended verified complaint to include Citybridge LLC and Time Warner Cable. City of New York interposed an answer to the amended complaint on or about March 13, 2019. Time Warner Cable served an answer to the amended complaint on or about May 2, 2019. Citybridge interposed an answer to the amended complaint on or about May 10, 2019.

“The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact.” (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

Citybridge LLC submits the affidavit of Robert Fox, who is employed by Intersection, the managing member of Citybridge LLC. Mr. Fox has been employed by Intersection since October 2017 and has held the title of project manager since October 2018. Mr. Fox is the project manager of LinkNYC installations and is responsible for overseeing the removal of old telephone booths, and the installation and maintenance of LinkNYC kiosks. Citybridge entered into a public communications structures franchise agreement with The City of New York to install, operate, and maintain LinkNYC kiosks. Citybridge LLC entered into a sub-contract with Triumph Construction Corp. on October 29, 2015, whereby Triumph agreed to furnish all labor, materials, tools, equipment and all other items necessary to install LinkNYC kiosks.

On June 12, 2017, Triumph began the removal of a telephone booth and the installation of a LinkNYC kiosk on the public sidewalk abutting 1741 Broadway, New York, New York.

“Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact.” (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Plaintiff’s affirmation in opposition highlights work permits “showing that movant had performed work in the location of the accident prior to the accident.”

A motion for summary judgment must be supported by affidavits, by a copy of the pleadings, and by other available proof, such as depositions and written admissions [CPLR 3212(b)]. However, a conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not satisfy a summary judgment proponent’s prima facie burden to show entitlement to judgment as a matter of law (*JMD Holding Corp v Congress Financial Corp*, 4 NY3d 373, 795 NYS2d 502 [NY 2005]).

To make out a prima facie case for summary judgment, the movant is required to offer admissible evidence that they were not responsible for the condition. Movant has only offered the affidavit of Mr. Fox, who started working for the defendant after plaintiff’s accident occurred. Mr. Fox’s affidavit fails to illustrate what first-hand knowledge he has of the incident and how he obtained this information. Mr. Fox does not have the requisite personal knowledge of work performed.

Additionally, the record indicates that the permits for the location were obtained in 2016. One permit was issued on April 4, 2016 to Citybridge LLC with a contact name of Allen Chapman. Another permit was issued on September 26, 2016 to Citybridge LLC with the same contact name of Allen Chapman.

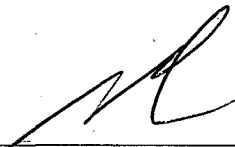
“Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable.” (*Forrest v Jewish Guild for*

the Blind, 3 NY3d 295 [2004]). On summary judgment, “facts must be viewed in the light most favorable to the non-moving party.” (*Vega v Restani Constr Corp*, 18 NY3d 499 [2012]).

There are still questions of fact on whether defendant Citybridge LLC was negligent in the operation, maintenance, control of the aforesaid premises. Defendant Citybridge LLC’s motion is premature as discovery is outstanding.

ORDERED that the motions for summary judgment, CPLR 3212(b), of defendant Citybridge LLC is DENIED with leave to renew.

Dated: January 21, 2020



Laurence L. Love, J.S.C.