Kirkland v City of New York
2020 NY Slip Op 30604(U)
February 21, 2020
Supreme Court, New York County
Docket Number: 152189/2018
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

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GLORIA KIRKLAND,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, NEW YORK CITY DEPARTMENT OF SANITATION, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION, METROPOLITAN TRANSPORTATION AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY CAPITAL CONSTRUCTION COMPANY, MTA BRIDGES AND TUNNELS

Defendant.

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INDEX NO. 152189/2018

MOTION DATE 02/06/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 44, 45, 46

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents,

This Order reads on a summary judgment motion by, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, NEW YORK CITY DEPARMENT OF TRANSPORTATION, and NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION, per CPLR 3212; dismissing plaintiff's verified complaint and any cross claims against the above-mentioned parties.

This personal injury action involves a slip and fall on the stairway at the "1" line subway station at 86th Street at its intersection with Broadway, New York Borough, New York State.

Plaintiff served a notice of claim on May 2, 2017 upon the Comptroller of the City of New York. A summons and complaint was served upon the parties on March 27, 2018. Issue

was joined by the service of an answer on or about May 9, 2018. The court granted codefendant TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY S/H/A MTA BRIDGES AND TUNNEL'S motion to dismiss on December 4, 2018.

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 (see *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

Plaintiff's notice of claim states, "GLORIA KIRKLAND came upon a defect and/or unsafe condition of the stairway, including but not limited to, ice and/or snow. GLORIA KIRKLAND was caused to slip, trip and fall, and was violently precipitated to the ground and sustained serious injury as hereinafter alleged."

Plaintiff underwent a General Municipal Law § 50-h hearing on January 11, 2018. The hearing established, "[d]id your accident occur entering the train station from the sidewalk to the first level down? No, it occurred on the steps. That day, before you started going down the steps, did you notice if the steps themselves had been attempted or cleared of snow at all? It was not, it was not cleared of snow."

Defendants state that the NEW YORK CITY TRANSIT AUTHORITY is responsible for the maintenance of the incident location pursuant to the terms of a lease agreement. Hence, the defendants do not owe a duty to plaintiff. To establish a *prima facie* case of negligence against the City, the plaintiff must demonstrate that the City a) owed a duty to the plaintiff, b) that the City breached the duty owed, and c) the resulting injury was proximately caused by the breach (see *O'Toole v Greenberg*, 64 NY2d 427 [1985]).

Defendants exhibit a "Composite Copy of Agreement of Lease between The City of New York and New York City Transit Authority."

Section 2.1 of the lease states, "[t]he City hereby leases to the [Transit] Authority … for use in the execution of the corporate purposes of the Authority all of the transit facilities now owned or hereafter acquired or constructed by the City."

Section 6.8 of the lease states, "[t]he [Transit] Authority covenants that, during the term of this Agreement, it shall be responsible for the payment of, discharge of, defense against and final disposition of, any and all claims, actions or judgments."

According to the Lease between the defendants and New York City Transit Authority, the defendants are out of possession of all transit facilities. Plaintiff's affirmation in opposition states, "and who owned the stairway (albeit leased it to NYCTA)."

The First Department has held that, [t]he motion court correctly granted defendant's motion since it demonstrated that the subway station is leased to the NYCTA, and it is an out-of-possession landlord (see *McGuire v City of New York*, 211 [1st Dept 1995]).

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 (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). On summary judgment, facts must be viewed in the light most favorable to the non-moving party (see *Vega v Restani Constr Corp*, 18 NY3d 499, 503 [2012]).

Plaintiff opposes this summary judgment motion because, "no discovery has been exchanged in this action by the defendants, there have been no depositions of any parties and no preliminary conference has been held. The City files it's Answer only 2 months ago."

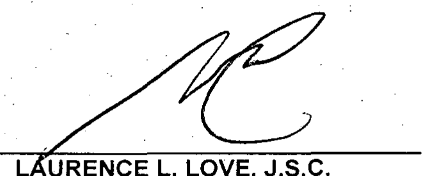
Plaintiff continues opposing with, "[a]lthough the New York City Transit Authority is responsible for the steps that lead to the New York City subway system, without discovery, the plaintiff is unable to ascertain if any acts by the City contributed to … the accumulation of ice."

It is well settled that a grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence (see *Cioe v Petrocelli Elec Co, Inc*, 33 AD3d 377, 378 [1st Dept 2006]).

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 (see *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968]).

ORDERED that the motions for summary judgment of defendants THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, and NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION, are granted and the complaint is dismissed against them; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, and NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION dismissing the claims and made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.



2/21/2020
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	☐ DENIED		GRANTED IN PART	☐	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐	REFERENCE