

Norman v City of New York

2020 NY Slip Op 30607(U)

February 14, 2020

Supreme Court, New York County

Docket Number: 152756/2013

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

Justice

-----X

BELINDA NORMAN,

Plaintiff,

- v -

THE CITY OF NEW YORK, OLIVE BRANCH REALTY GROUP, INC.

Defendant.

-----X

INDEX NO. 152756/2013

MOTION DATE 01/27/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion is decided as follows:

Plaintiff commenced the instant action to recover for injuries allegedly sustained when she tripped on an allegedly defective sidewalk located at 200 Edgecombe Avenue in New York County on August 18, 2012 at approximately 3:00 AM. On December 17, 2012, plaintiff appeared for a 50-h hearing wherein she testified that she fell on a sidewalk in front of an abandoned house. Defendant, The City of New York, now moves pursuant to CPLR 3212, seeking an order granting summary judgment, dismissing the complaint and all cross-claims as pursuant to Section 7-210 of the Administrative Code of the City of New York ("7-210"), the City is not liable for Plaintiff's injuries.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. Zuckerman v. City of New York, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980).

The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

Section 7-210 states that “the owner of real property abutting any sidewalk, including, but not limited to; the intersection quadrant for corner property shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition.” *N.Y. Admin. Code, N.Y.C., N.Y. §7-210* (2003). The section further indicates that “[t]his subdivision shall not apply to one, two, or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.” *Id.* Also, “[n]otwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two-or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively

for residential purposes) in a reasonably safe condition. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.” *Id.* To determine if the City is liable under 7-210, the court will look at: (1) the location of the sidewalk where the alleged accident transpired; (2) the non-City ownership of the real property that abuts the location where the alleged accident occurred; and (3) the non-exempt building classification of the abutting property. *Id.*

In support of its motion, the City submits the affidavits of Larissa Dubina, a member of the Office of Litigation Services and Records Management at the DOT, David Schloss, a New York City Law Department Senior Title Examiner and David Atik, a Department of Finance Employee, together with supporting documentation, which establish as follows: Mr. Schloss performed a search for title records for the record owner of 200 Edgecombe Street, New York, New York, designated on the tax map as Block 2150, Lot 110, which revealed that on August 8, 2012, the date of Plaintiff s incident, the property in question was owned by defendant Olice Branch Realty Group, Inc. Mr. Atik, conducted a search for records pertaining to the subject location which further revealed that the City of New York did not own the Property. Ms. Dubina’s affidavit establishes that after a review of all permits, applications for permits, corrective action requests, notices of violation, inspections, maintenance and repair orders, sidewalk violations, contracts, complaints, and Big Apple Maps at the abovementioned location encompassing a period of two years prior to and including August 18, 2012, there is no evidence that the City affirmatively undertook any action such that it could even arguably have caused or created the subject condition. Further, while the property is classified as a three family home, at the time of plaintiff’s accident the property was unoccupied. As such, it would not fall under any of the exemptions indicated in 7-210 and the property owner at issue would not be exempt from liability. As such, the City has

made out a *prime facie* showing of entitlement to summary judgment unless the parties opposing the motion establish a question of fact.

ORDERED that the motion of defendant the City of New York to dismiss the complaint and all cross-claims herein is granted, without opposition, and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

2/14/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	