

Matty v City of New York
2020 NY Slip Op 30795(U)
March 13, 2020
Supreme Court, New York County
Docket Number: 160869/2017
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK

PART 52

Justice

-----X

INDEX NO. 160869/2017

SUE MATTY,

03/11/2020,

Plaintiff,

MOTION DATE 03/11/2020

- v -

MOTION SEQ. NO. 002 003

THE CITY OF NEW YORK, RB 52 CO LLC, 52 BROADWAY
REALTY CORP, UNITED FEDERATION OF TEACHERS
LOCAL 2, THE KING'S COLLEGE NEW YORK CITY

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

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, 60, 61, 62, 81, 85, 86, 87, 91, 93, 96

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 88, 89, 94

were read on this motion to/for

JUDGMENT - SUMMARY

This action arises out of injuries alleged sustained by plaintiff on May 1, 2017 when the plaintiff was injured as a result of a “deteriorated. uneven, not level. broken and/or cracked condition(s)” on the “pedestrian walkway, curb, and/or roadway” on Exchange Place near the corner of Broadway, in the County, City and State of New York.

Defendant the City of New York (“City”) moves for summary judgment seeking an order pursuant to CPLR § 3212 dismissing the complaint and all cross-claims. The City maintains that it is entitled to summary judgment as Administrative Code section 7-210 is applicable and the City is not the abutting landowner. In the alternative, the City argues it did not have prior written notice of a defective condition on the sidewalk or curb nor did it cause or create the defective condition. Plaintiff opposes the City’s motion on the grounds that the Big Apple Map provides notice of a defective condition. Co-defendants RB 52 Co. LLC, 52 Broadway Realty Corp., and

United Federation of Teachers Local 2, (collectively "RB 52") sole basis for their motion regards the applicability of Administrative Code section 7-210, arguing they did not have responsibility for this location pursuant to that section, with potential liability falling on the City. Plaintiff also opposes the instant motions on the grounds that there is a question of fact with respect to the classification of the location of the incident. Based on the reasons set forth below, both motions for summary judgment are denied.

Applicable Law

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]. As such, 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 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]. Courts have also recognized that 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.

To hold the City liable for injuries resulting from sidewalk, roadway and/or curb defects, a plaintiff must demonstrate that the City has received prior written notice of the subject condition. *See* Admin Code of the City of New York § 7-201(c)(2); *Amabile v City of Buffalo*, 93 NY2d 471 [1999]. The only recognized exceptions to the prior written notice requirement are where the municipality itself created the defect through an affirmative act of negligence or where the defect resulted from a special use by the municipality. *See Yarborough v City of New York*, 10 NY3d 726 [2008]; *Amabile v City of Buffalo*, 93 NY2d 471 [1999].

Administrative Code § 7-210 provides in pertinent part 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.” NY Admin Code §7-210.

RB 52’s Motion

Defendant rests its entire motion on the argument that plaintiff was injured as a result of a defect in the *curb or roadway* of Exchange Place (emphasis added). In support of this contention, RB5 2 defines roadways, sidewalks and curbs, citing to various case law, statutes and ordinances. Based on the definitions relied on by RB 52, the argument is that it is obvious that the location of the accident is a curb/roadway and not within the purview of Admin Code §7-210. However, this assertion is not supported by any evidence, in admissible form or otherwise, establishing the classification of the location in question. Notably, plaintiff’s testimony does not describe the area in question as a curb or a roadway. Moreover, it appears that the location in question was set off for the use of pedestrians at the time of the accident. Plainly stated, there is a question of fact as to whether the area where plaintiff was injured is the sidewalk, the curb, or the roadway.

Moreover, RB 52 does not argue that it lacked notice of the alleged defect nor that it did not create the alleged defect. Accordingly, RB 52 has failed to establish its entitlement to judgment as a matter of law.

The City’s Motion

The City has established that it did not receive prior written notice of any curb defects at the location of the accident. If the area in question is in fact the sidewalk, then liability rests with

the adjacent landowner, pursuant to Admin Code §7-210. If the area in question is a curb then the City has established that it received no prior written notice of a curb defect, through both its records and the absence of a marking, for a curb defect, on the Big Apple Map. However, if the area in question is a roadway, the record is silent as to the absence of prior written notice.


As stated above the classification of the location of the incident is in question. The City did not conduct a search for prior written notice of the any defects in the roadway. Consequently, the City has not established that it did not receive prior written notice of the alleged defect that caused plaintiff's accident.

Conclusion

A careful review of the papers show that the neither the City nor RB 52 have made a *prima facie* showing of entitlement to summary judgment. Therefore, it is hereby

ORDERED that both motions for summary judgment are denied.

3/13/2020
DATE


LYLE E. FRANK, J.S.C.
**HON. LYLE E. FRANK
J.S.C.**

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