

Curiel v City of New York
2020 NY Slip Op 32886(U)
September 2, 2020
Supreme Court, New York County
Docket Number: 151746/2015
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE, JSC PART 62

Justice

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MARILYN CURIEL,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, THE NEW YORK
CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, CONSOLIDATED EDISON COMPANY OF
NEW YORK

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for

JUDGMENT - SUMMARY

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

Plaintiff commenced the instant action by filing a Summons and Verified Complaint dated February 20, 2015, followed by a Supplemental Summons and Amended Complaint dated August 11, 2015, and Second Supplemental and Second Amended Complaint dated April 28, 2016, seeking to recover damages for the personal injuries alleged to have been sustained as a result of a trip and fall which occurred on May 15, 2014, on Hillside Avenue near its intersection with Nagle Avenue in New York County. Issue was joined by service of defendant Con Edison's Verified Answer. Plaintiff alleges in her Bill of Particulars that the incident occurred in the roadway directly adjacent to the curb line in the crosswalk at the corner in front of 1 Nagle Avenue approximately two (2) feet from the pedestrian traffic signal pole.

Defendant, Con Edison now moves for summary judgment. In support of the instant motion, defendant submits plaintiff's 50-h hearing and deposition transcripts, the deposition

transcript of Con Edison records searcher, George Canzaniello, and a copy of the search results. Said search, conducted on March 30, 2016, seeking records for any work at or near the intersection of Hillside and Nagle Avenues in New York, New York for two (2) years prior to and including the date of the alleged incident revealed seven permits for work in the area, none of which were relevant to plaintiff's alleged accident location. It is undisputed that Con Edison does not own the land where plaintiff's accident occurred.

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 (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 (1957); Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732 (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 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).

For a plaintiff to establish a cause of action sounding in negligence, he must meet the initial burden of showing (1) the existence of a duty flowing from defendant to plaintiff; (2) a breach of this duty; (3) a reasonably close causal connection between the contact and the resulting injury;

and (4) actual loss, harm or damage, Febesh v. Elcejay Inn Corp., 157 A.D.2d 102, 104 (1st Dept. 1990). A defendant cannot be liable for a plaintiff's injuries unless it owes a duty of care running directly to the injured person. See, e.g., Valdez, 18 N.Y.3d at 75; Lauer v. City of New York, 95 N.Y.2d 95, 100 (2000); Palka v. Servicemaster Mgt. Servs. Corp., 83 N.Y.2d 579, 584 (1994). Generally, a duty must be predicated upon ownership, occupancy, control or special use of the property. Further, “A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence” (Smith v Costco Wholesale Corp., 50 AD3d 499, 500 [1st Dept 2008]). Upon such showing, the burden shifts to the party opposing the motion “to raise a triable issue of fact as to the creation of the defect or notice thereof” (Rodriguez v 705-7 E. 179th St. Hous. Dev. Fund Corp., 79 AD3d 518, 519 [1st Dept 2010] (Briggs v. Pick Quick Foods, Inc., 103 A.D.3d 526 [1st Dept.2013])).

Here, defendant, Consolidated Edison Company of New York has established through its submitted deposition transcripts and supporting documentation that it does not own the location where plaintiff allegedly fell, that it did not cause or create the subject condition and that it was not under a legal duty to repair the alleged condition. As such, said defendant has established a *prima facie* entitlement to summary judgment, which has not been opposed.

ORDERED that the motion of defendant Consolidated Edison Company of New York for Summary Judgment, dismissing the complaint herein is granted 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).

9/2/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE