

Phillips v City of New York

2020 NY Slip Op 33382(U)

October 16, 2020

Supreme Court, New York County

Docket Number: 154228/2017

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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TRACEY PHILLIPS,

Plaintiff,

- v -

THE CITY OF NEW YORK, 855 SIXTH AVENUE
CONDOMINIUM, 855 MRU LLC, CONSOLIDATED EDISON,
INC., GOTHAM CONSTRUCTION COMPANY, LLC

Defendant.

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INDEX NO. 154228/2017

MOTION DATE 10/15/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, defendants', 855 MRU LLC, GOTHAM

CONSTRUCTION COMPANY, LLC; motion for summary judgment and CONSOLIDATED EDISON, INC., cross-motion for summary judgment are granted in their entirety.

This action arises out of injuries allegedly sustained, on August 9, 2016, as a result of a trip and fall on a defect in front of 855 Sixth Avenue. Defendants 855 MRU LLC, GOTHAM CONSTRUCTION COMPANY, LLC, move for summary judgment on the grounds that they had no duty to repair or maintain the sidewalk at the location and had not worked near the location for over a year before the accident. Defendant CONSOLIDATED EDISON, INC., moves for summary judgment on the grounds that it did not do any work near the accident location thus did not cause and create the defect. The plaintiff opposes Defendants 855 MRU LLC, GOTHAM CONSTRUCTION COMPANY, LLC motion and CONSOLIDATED EDISON, INC.,'s motion is unopposed.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “This drastic remedy should not be granted where there is any doubt as to the existence of such issues, or where the issue is ‘arguable’; ‘issue-finding, rather than issue-determination, is the key to the procedure” (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957] [internal citations omitted]).

A plaintiff must establish that a defendant owed a duty of care and then breached that duty to that plaintiff. *Turcotte v Fell*, 68 NY2d 432, 502 [1986]. Furthermore, if a party does not own, control, occupy, or have a special use for the property where the alleged defective or dangerous condition existed, then that party cannot be held liable for injuries caused by the defective or dangerous conditions. *Minot v City of New York*, 230 AD2d 719 [2d Dept 1996]. Lastly, if a movant proffers sufficient evidence to demonstrate an absence of any material issues of fact, then the movant has met their burden to make a prima facie showing of entitlement as a matter of law. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986].

Defendants have made out their prima facie showing for dismissal and such have not been adequately refuted. Defendants 855 MRU LLC, GOTHAM CONSTRUCTION COMPANY, LLC have established, through undisputed admissible evidence, that they did not occupy the premises where the accident occurred and had no connection to the premises for well

over a year before the accident occurred. The Court is not persuaded by plaintiff's argument that the motion is premature. Plaintiff has failed to raise a triable issue of fact.

Defendant CONSOLIDATED EDISON, INC., has likewise established its entitlement to judgment as a matter of law by establishing that it did not cause or create the alleged defect.

Accordingly, it is hereby

ORDERED that the motions for summary judgment by defendants 855 MRU LLC, GOTHAM CONSTRUCTION COMPANY, LLC and CONSOLIDATED EDISON COMPANY LLC are granted in their entirety, and the Clerk of the Court is directed to enter judgment of dismissal for these defendants as to all claims and cross-claims; 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 counsels for the moving parties 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).

10/16/2020

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

X

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

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