

Harris v City of New York
2020 NY Slip Op 33476(U)
October 21, 2020
Supreme Court, New York County
Docket Number: 158311/2016
Judge: J. Machelie Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

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RODNEY HARRIS,

Plaintiff,

- v -

THE CITY OF NEW YORK, NYC DEPARTMENT OF
TRANSPORTATION, NEW YORK CITY TRANSIT
AUTHORITY, METROPOLITAN TRANSIT AUTHORITY,
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY, MTA BUS COMPANY

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 50, 51

were read on this motion to/for

JUDGMENT - SUMMARY

Pending before the court is a motion made by defendants The City of New York and the New York City Department of Transportation (collectively, the “City”), which seeks (1) an Order pursuant to C.P.L.R. § 3212, granting summary judgment in favor of the City of New York, and (2) an Order pursuant to C.P.L.R § 3211(a)(7) dismissing the Complaint against Defendant New York City Department of Transportation. Upon the foregoing documents listed above, it is **HEREBY ORDERED** that this motion is **DENIED**.

The plaintiff alleges that he fell while exiting a public bus on Lexington Avenue, between East 78th and 79th Streets, due to a defect in the roadway. In its motion for summary judgment, the City argues that it did not receive prior written notice of the alleged roadway defect which plaintiff claims caused his accident. In opposition, plaintiff argues that two months prior to his accident, a 311 complaint was made about the defect at issue. Specifically, plaintiff alleges that on March 9,

2016, an individual named Arnold Manheimer called 311 and reported “a crack in between the sidewalk and pavement,” and that the operator noted the cross streets to be at Lexington Avenue and East 79th Street.

The City does not dispute that such a call occurred, and in fact the record of the call was produced by the City as part of discovery. However, the City argues that the call does not give prior notice of the subject condition, because the 311 call was about the *intersection* of Lexington Avenue and East 79th Street, whereas plaintiff alleges that he fell on Lexington Avenue, *between* East 78th and 79th Streets. Furthermore, the City argues that the call was about a defect “crack,” whereas the area where plaintiff fell had a “rectangular hole,” which the City argues is different from a “crack.” In response, plaintiff argues that the area where he fell had a “trench” that could be the same “crack” that was the subject of the 311 call. Additionally, plaintiff argues that the 311 call was about the “cross streets” of Lexington Avenue and East 79th Street, which does not necessarily equate to the “intersection” of said streets, and could very well be describing the location where he fell.

On February 13, 2020, Justice Lawrence Love heard oral arguments about the alleged 311 call, and issued an order directing the City to provide all inspection and maintenance records related to the call and to make available for deposition any witnesses that had knowledge of the complaint. The City did not produce any records or witnesses and maintains that although a complaint was noted in the City database, neither maintenance nor repairs were ordered as a result of this complaint and, therefore, there are no further records to disclose.

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 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1st Dept. 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 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 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 Dept. 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 [NY Ct. of Appeals 1957]).

Here, there remain questions of fact as to whether the defect complained of by plaintiff is the subject of the 311 call and whether, in turn, the 311 call provided proper notice to the City of the subject condition.

In light of the foregoing, it is hereby:

ORDERED that the City's motion for summary judgment is denied.

This constitutes the decision and order of the court.

10/21/2020

DATE

J. MACHELLE SWEETING, 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