

Watson v Dunbar Owner LLC
2020 NY Slip Op 34075(U)
December 9, 2020
Supreme Court, New York County
Docket Number: 160315/2018
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 IAS MOTION 52EFM

Justice

JAZMINE WATSON, Plaintiff, - v - DUNBAR OWNER LLC, SKYWORX CONTRACTING INC., CITY OF NEW YORK Defendant. INDEX NO. 160315/2018 MOTION DATE N/A, N/A, N/A MOTION SEQ. NO. 002 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 62, 74, 75, 76, 77, 78, 88

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 73, 79, 80, 81, 82, 89

were read on this motion to/for SECURITY FOR COSTS/PAYMENTS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 69, 70, 71, 72, 83, 84, 85, 86, 90

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the Decision/Order of the Court is as follows:

Motion Sequence 2

Defendant, The City of New York, (the "City") pursuant to CPLR 3212, moves this Court for an order granting summary judgment, dismissing the complaint and all cross-claims. The City contends that under 7-210 of the Administrative Code of the City of New York ("7-210"), the City is not liable for plaintiff's injuries. For the reasons set forth below, this Court grants the City's motion for summary judgment in its entirety and dismisses the complaint and all cross-claims against it.

Plaintiff alleged that on December 17, 2017, she tripped and fell on the sidewalk in front of a property addressed as 2588 Seventh Avenue, New York, New York.

Summary Judgment Standard

A party moving for summary judgment must demonstrate an absence of any material issue of fact and an entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]. Because summary judgment is a drastic remedy that deprives a litigant of his or her day in court, the evidence in the record is viewed in a light most favorable to the party opposing the motion. *Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989].

Once the movant has established its entitlement to judgment as a matter of law, the burden then shifts to the opponent to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [“mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient”]).

Administrative Code § 7-210

Section 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.

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.*

Therefore, the City makes out *prima facie* entitlement to summary judgment by establishing that the location of an occurrence meets the definition of Admin Code section 7-210, which the City has established.

In opposition to the City’s motion, plaintiff avers that because there is a marking on the Big Apple Map, the City has failed to establish entitlement to judgment as a matter of law. However, the Court is not persuaded by the argument as plaintiff fails address or rebut the that Administrative Code 7-210 applies to the location in question. Moreover, any argument that the City created the subject condition rests on speculation. Plaintiff has failed to submit any admissible evidence to raise a triable issue of fact. Accordingly, the City has established its *prima facie* entitlement to judgment as a matter of law.

Motion Sequence 4

Defendant, Skyworx Contracting Inc. (Skyworx), pursuant to CPLR 3212, moves this Court for an order granting summary judgment, dismissing the complaint and all cross-claims. Skyworx contends, among other things, that there was not causal link between the sidewalk shed that it constructed and plaintiff’s accident. Skyworx has failed to establish its entitlement to judgment as a matter of law. While Skyworx argues that plaintiff cannot establish a causal link between the alleged defect and the sidewalk shed, defendant is simply pointing to the gaps in

plaintiff's case. It is well established that pointing to deficiencies in plaintiff's case is insufficient to establish a party's entitlement to summary judgment. See *Campbell v New York City Transit Auth.*, 109 AD3d 455, 456 [2d Dept 2013]; *Kqulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Alvarez v 21st Century Renovations Ltd.*, 66 AD3d 524, 525 [1st Dept 2009]). Skyworx has failed to produce any admissible evidence aside from the arguments of counsel that in its construction of the sidewalk shed it did not cause or create the defect. As none of this to say that Skyworx will not be able to maintain its burden in the future, defendant's motion for summary judgment is denied without prejudice.

Motion Sequence 3

Defendant Skyworx's motion for security for costs pursuant CPLR § 8501(a) is granted to the extent that plaintiff does not dispute that security costs are appropriate; the amount however, is in dispute. Since Skyworx may not continue to be a party until the conclusion of this litigation for the reasons stated above, this Court will order the plaintiff to pay the statutory minimum of \$500. Defendant, Skyworx, may re-bring the instant application at later point in the litigation. Accordingly, it is hereby

ORDERED that Skyworx motion for summary judgment is denied without prejudice; and it is further

ORDERED that the application of defendant Skyworx, for an order directing the posting of security for costs by plaintiff is granted; and it is further

ORDERED that, within 30 days from the date of service of a copy of this order with notice of entry, the plaintiff either (i) pay into the Court the sum of \$500.00 (payable in cash, or by credit card (Mastercard, Visa, or American Express), certified check or bank check) to be applied to the

payment of costs, if any, awarded against the plaintiff, or (ii), at his/her/its election, file with the Clerk of the Court (60 Centre Street, Room 141 B) an undertaking with sufficient surety in a like amount to be applied to the payment of costs, if any, awarded against the plaintiff in this action; and it is further

ORDERED that such filing of an undertaking with the Clerk of the Court 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/suptctmanh); and it is further

ORDERED that, within said 30-day period, plaintiff serve upon the attorneys for the defendant a written notice of the aforesaid payment or of the filing of such undertaking; and it is further

ORDERED that all further proceedings, except to review this order, are stayed for 30 days from the date of service of a copy of this order with notice of entry; and it is further

ORDERED that the City’s motion is granted in its entirety and the complaint and all cross-claims are dismissed as against the City of New York; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of said defendant 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 counsel 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); and it is further

ORDERED the case be transferred to a non-City part as the City of New York is no longer a party in this action.

ORDERED that the Clerk is directed to enter judgment accordingly.

12/9/2020
DATE


LYLE E. FRANK, 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"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE