

**Hopkins v City of New York**

2021 NY Slip Op 30832(U)

March 17, 2021

Supreme Court, New York County

Docket Number: 102479/2011

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
INDEX NO. 102479/2011
JEAN HOPKINS, MOTION DATE N/A, N/A
Plaintiff, MOTION SEQ. NO. 008 009

- v -

THE CITY OF NEW YORK, NEW YORK DOWNTOWN
HOSPITAL, TROCOM CONSTRUCTION OF NEW YORK,
LLC

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 3, 4, 5, 6, 7, 8, 9, 10,
11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 54, 56, 61, 68, 69, 70, 76, 77
were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 30, 31, 32, 33, 34,
35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 57, 58, 59, 60, 62, 63, 64, 65,
66, 67, 71, 72, 73, 74, 75
were read on this motion to/for JUDGMENT - SUMMARY

This action arises out of injuries allegedly sustained by plaintiff as a result of a trip and
fall on the sidewalk in front of New York Downtown Hospital. Defendants, The City of New
York and New York Downtown Hospital move for summary judgment. Plaintiff's opposes both
motions and cross-moves to strike The City of New York's answer. For the reasons set forth
below, both motions for summary judgment are denied and plaintiff's cross-motion is denied.

Summary Judgment Standard

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 NY2d 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 NY2d 395

[1957]; *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 AD2d 331 [1<sup>st</sup> Dept 1984] *aff'd* 65 NY2d 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 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 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 AD2d 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 NY2d 395 [1957].

#### **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.*

#### New York Downtown Hospital’s Motion

New York Downtown Hospital (NYDH) moves for summary judgment on the grounds that where the plaintiff’s accident occurred was an active construction site and NYDH was not the entity performing construction<sup>1</sup>. NYDH contends that Antonio Suarez’s testimony, its own witness, the documents disclosed by the City of New York and plaintiff’s testimony establish that the City of New York was performing construction at the accident location. The City and plaintiff both argue that NYDH has failed to establish that Admin. Code 7-210 does not apply. The Court agrees.

NYDH has not established that alleged defect that caused plaintiff’s accident was caused by the City of New York, rather than a failure to inspect and maintain the subject premises. In support of its motion, NYDH fails to attach any inspection records, or testimony from an individual with the responsibility of responding to or maintaining records regarding complaints about the subject sidewalk. NYDH has not established that it had neither actual nor constructive notice of a defective condition. Accordingly, NYDH’s motion for summary judgment is denied.

#### The City of New York’s Motion

The City of New York moves for summary judgment on the grounds that Admin. Code §7-210 applies, and the abutting landowner has the responsibility to maintain the sidewalk in reasonably safe condition. The City contends that defendant, NYDH, as the abutting landowner,

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<sup>1</sup> NYDH also contends that the defect was open and obvious, however since there is an issue as to the condition of the sidewalk in question at the time of the accident, and whether work was being performed, the Court does not reach this argument.

has a non-delegable duty to maintain the sidewalk. While the City is in fact correct on this point, there is a question of fact as to whether the City caused or created the defect.

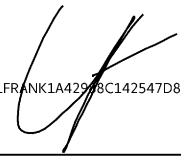
During the discovery phase of the instant action, the City disclosed various documents including contracts that were retrieved. Of the documents disclosed, DDC Contract #HWM1165, refers to construction that was permitted to begin before plaintiff's accident. In support of its motion the City annexes an affidavit of Krishna Manikarnika, the engineer-in-charge of the contract in question, that states that construction did not begin on that contract until after plaintiff's accident. Mr. Manikarnika was later deposed and did not recall the details of the contract, nor were any documents produced to corroborate the affidavit. The witness could also not recall preparing his prior affidavit and said that he relied on records that have not been produced in this case to confirm his recollection at the time of making his affidavit. The Court finds that this creates an issue of fact as to whether construction was ongoing at the time of plaintiff's accident, thereby creating an issue of fact as to whether the City caused or created the defect. Accordingly, the City of New York's motion for summary judgment is denied.

#### Plaintiff's Cross-Motion

The Court finds that plaintiff has not established any willful or contumacious conduct on behalf of the City to warrant the requested sanctions. The Court deems the issues raised for sanctions against the City to be appropriate for a *motion in limine* at the time of trial and are not appropriate at this juncture. Accordingly, plaintiff's motion is denied.

The foregoing constitutes the decision and order of the Court.

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3/17/2021

DATE

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LYLE E. FRANK, 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