

Matveeva v City of New York
2021 NY Slip Op 31068(U)
March 25, 2021
Supreme Court, New York County
Docket Number: 450675/2016
Judge: Dakota D. Ramseur
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAKOTA D. DAMSEUR

PART

Justice-----X
MIROSLAVA MATVEEVA,

Plaintiff,

- v -

THE CITY OF NEW YORK, ALLIANCE FOR DOWNTOWN
NEW YORK, INC., COENTIES SLIP & PEARL STREET LLCDefendants.
-----XINDEX NO. 450675/2016MOTION DATE 06/26/2020MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 76, 77

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

Plaintiff Miroslava Matveeva ("Plaintiff") commenced this action seeking damages for personal injuries sustained on September 3, 2014, when she tripped and fell over a cornhole board in the pedestrian plaza at 2 Coenties Slip, New York, New York. Defendant City of New York ("City") moves pursuant to CPLR 3212 for summary judgment on the complaint, arguing that it did not have prior written notice of the alleged defect or dangerous condition and did not cause or create the subject condition. Plaintiff opposes the motion. For the foregoing reasons, the City's motion is granted.

When presented with a motion for summary judgment, the court's function is issue finding, not issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). If triable issues of fact exist, summary judgment is not warranted (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Summary judgment will be granted if it is clear that no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986].) The burden is on the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law (*Id.*). The burden is a heavy one: the facts must be viewed in the light most favorable to the non-moving party and every available inference must be drawn in the non-moving party's favor (*Sherman v New York State Thruway Authority*, 27 NY3d 1019 [2016] [internal quotation marks omitted]).

If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of a triable issue of fact (*Alvarez*, at 324). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Because summary judgment deprives a litigant of the party's day in court, it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Sherman v New York State Thruway Authority*, 27 NY3d 1019 [2016]).

Section 7-201 (c) (2) of the New York City Administrative Code (“AC”) provides, in pertinent part:

No civil action shall be maintained against the city for... injury to person... sustained in consequence of any street, highway, bridge, wharf, culvert, sidewalk or crosswalk, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto, being out of repair, unsafe, dangerous or obstructed, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice, or where there was previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency, or there was written acknowledgement from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within 15 days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

(AC § 7-201 (c) (2)).

AC § 7-201 (c) (2) “limits the City’s duty of care over municipal streets and sidewalks by imposing liability only for those defects or hazardous conditions which its officials have been actually notified exist at a specified location” (*Katz v City of New York*, 87 NY2d 241, 243 [1995]; *Daniels v City of New York*, 91 AD3d 699, 700 [2012] [internal quotation marks omitted]). “[P]rior written notice of a defect is a condition precedent which plaintiff is required to plead and prove to maintain an action against the City” (*Katz v City of New York*, 87 NY2d at 243).

AC § 7-201 (c) (1) provides that, as used in this subdivision, the term “street” shall include the curbstone, an avenue, underpass, road, alley, lane, boulevard, concourse, parkway, road or path within a park, approach, driveway, thoroughfare, public way, public square, public place, and public parking area (AC § 7-201 [c] [1] [a]) and that the term “sidewalk” shall include a boardwalk, underpass, pedestrian walk or path, step and stairway (AC § 7-201 [c] [1] [b]).

Here, the City establishes prima facie entitlement to summary judgment as a matter of law by demonstrating that the City had no prior written notice of the alleged defect or dangerous condition. As set forth in the allegations of plaintiff’s notice of claim and complaint and through plaintiff’s testimony in her examination before trial, the plaintiff alleges that she sustained injuries as a result of tripping and falling over a cornhole board in the pedestrian plaza at Coenties Slip between Water Street and Pearl Street. The affidavits of the Department of Transportation employee establish that he conducted separate sidewalk and roadway records searches for the area of Coenties Slip between Water Street and Pearl Street for a period of two years prior to and including the date of the accident and that the results of those searches, including the responses to the records searches and the maps provided by the Big Apple Pothole

and Sidewalk Protection Corporation which are attached to the City's submission, demonstrate that the City received no prior written notification of the subject condition and did not directly cause or create the subject condition. Accordingly, the burden shifts to the plaintiff to demonstrate the applicability of one of the two recognized exceptions to the prior written notice rule, that the City proximately caused or created the alleged defect through an affirmatively negligent act, or that there existed with respect to the pedestrian plaza where the accident occurred a special use from which the City derived a special benefit (*see Yarborough v City of New York*, 10 NY3d 726, 728 [2008]); *Amabile v City of Buffalo*, 93 NY2d 471, 474 [1999]).

Plaintiff's opposition does not raise a triable issue of fact. Plaintiff contends that the prior written notification requirement of AC § 7-201 (c) (2) should not apply here because the location of the accident, the pedestrian plaza at Coenties Slip between Water Street and Pearl Street, is described by plaintiff in her examination before trial testimony as a seating area or plaza and neither a sidewalk nor street. Contrary to the plaintiff's contentions otherwise, the pedestrian plaza where the accident allegedly occurred fits within the definitions of both the term "street," as set forth in AC § 7-201 (c) (1) (a), which includes the terms, "public way, public square, and public place," and also within the definition of the term "sidewalk" as set forth in AC § 7-201 (c) (1) (b), which includes the term "pedestrian walk or path."

The cases cited by plaintiff in support of the contention that the prior written notification requirement of AC § 7-201 (c) (2) should not apply here because the location of the accident, a pedestrian plaza, is not a sidewalk or street are distinguishable. Unlike this case where the accident allegedly occurred in a pedestrian plaza, which meets the definitions of the terms "street" and "sidewalk" under AC 2-701 (c) (1), the cases relied upon by plaintiff involve accident locations found not to be sidewalks because they do not involve areas over which the public has a general right of passage, and which are the functional equivalent of a sidewalk or highway, including an asphalt softball field (*Furnari v City of New York*, 89 AD3d 605 [1st Dept 2011]), playground equipment (*White v Inc Vill of Hempstead*, 13 Mis3d 471 [2011]), floating docks (*Giarrafara v Town of Babylon*, 84 AD3d 1162), and a gangway leading to a dock (*Lofaro v City of New Rochelle*, 2013 NY Misc LEXIS 5132 (Sup Ct Westchester County 2013) (*see also Garret v County of Suffolk*, 2017 NY Slip Op 30284, *9-10 [Sup Ct Suffolk County, 2017] [U] [denying summary judgment motion of defendant municipality based upon the prior written notification rule where plaintiff allegedly tripped over a hole in the rubberized surface of a playground])).

Plaintiff makes no showing that the City caused or created the alleged defective condition through affirmative negligence (*see Yarborough*, 10 NY3d at 728). Plaintiff's other arguments concerning constructive notice are also without merit (*see Amabile*, 93 NY2d at 476).

Since there is no evidence that the City received prior written notice of the condition that resulted in the plaintiff's accident and injuries (the cornhole board over which plaintiff tripped and fell), and no evidence that the City created or caused the condition through affirmative negligence that resulted in the plaintiff's accident and injuries, the City's motion for summary judgment must be granted.

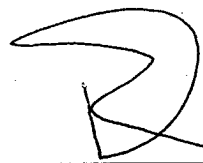
Accordingly, based upon the foregoing it is hereby

ORDERED that the City's motion for summary judgment (Mot. Seq. #3) is GRANTED and all claims and crossclaims are dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of the City dismissing the claims and crossclaims made against City in this action, without any costs and disbursements, and it is further

ORDERED that, as the City is no longer a defendant in this action, this matter shall be transferred to a Justice of a non-City part.

This constitutes the decision and order of the Court.



3/25/2021
DATE

HON. DAKOTA D. DAMSEUR, J.S.C.

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: