

Puga v Surrey Hotels Corp.

2021 NY Slip Op 32144(U)

October 29, 2021

Supreme Court, New York County

Docket Number: Index No. 158662/2017

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 52

Justice

-----X

MERCEDES PUGA,

Plaintiff,

- v -

SURREY HOTELS CORP., DUANCO, INC.,

Defendant.

-----X

SURREY HOTELS CORP., DUANCO, INC.

Plaintiff,

-against-

THE CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 158662/2017
MOTION DATE N/A
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595975/2018

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 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, 105, 106, 107, 108, 109

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. Plaintiff alleges that on July 9, 2017 she tripped and fell on a strip of decorative cobblestones in front of The Liberty Inn, located at 51 Tenth Avenue in the County, City and State of New York. Defendants Surrey Hotels Corp. and Duanco Inc. initiated the third-party action against third-party defendant the City of New York (City) alleging that the area in question is the responsibility of the City.

Third-party defendant, City, now moves for summary judgment on the grounds 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. Defendants/third-party plaintiffs oppose and cross-move to compel the City to produce a witness for a deposition. Plaintiff submits an affirmation in support of the City's motion, opposition to the cross-motion by defendants/third-party plaintiffs and cross-moves for severance of the third-party action if the City's motion for summary judgment is denied. For the reasons set forth below the City's motion is granted in its entirety, defendants/third-party plaintiffs' cross-motion is denied and plaintiff's cross-motion is denied as moot.

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 [1st 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 carefully 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].

Section 7-210 of the Administrative Code of the City of New York

Section 7-210 states 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.” *N.Y. Admin. Code, N.Y.C., N.Y. §7-210 (2003)*.

The section also indicated that “[t]his subdivision shall not apply to 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.” *Id.*

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 section 7-210, which the City established, discussed below.

Discussion

Plaintiff identified the sidewalk adjacent to The Liberty Inn as the location of where the accident transpired. Plaintiff contends that there is no evidence, nor any allegations made in her testimony or pleadings that the location of the defect was located within a tree well or tree pit.

In opposition to the City's motion, defendants/third-party plaintiffs argue that the alleged defect that caused plaintiff's accident was within a tree well rendering § 7-210 inapplicable. However, plaintiff has provided no admissible evidence to support this contention. It is well established that a motion for summary judgment may not be defeated by mere speculation. Moreover, it is undisputed that The Liberty Inn does not fall under any of the exemptions indicated in § 7-210. Consequently, defendants/third-party plaintiffs have failed to raise a triable issue of fact, further, no evidence was produced to establish a question of fact as to whether the City caused or created the alleged defect or made special use of the sidewalk in question. The Court has reviewed defendants/third-party plaintiffs remaining contentions and finds them unavailing. Accordingly, the City's motion is granted in full, and it is hereby

ORDERED that the third party complaint is dismissed in its entirety as against The City of New York, and the Clerk is directed to enter judgment accordingly in favor of said third party defendant; and it is further


ORDERED that the main action is continued; 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 party 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).

<p><u>10/29/2021</u> DATE</p>			 <small>20211029093332LFRANK99FF80CF8E124F888E6BCC701AA6EE33</small> <hr/> 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"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER