

Ramos v City of New York

2022 NY Slip Op 30746(U)

March 31, 2022

Supreme Court, New York County

Docket Number: Index No. 153403/2019

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **05RCP**

Justice

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JOSE RAMOS,

Plaintiff,

- v -

THE CITY OF NEW YORK, CONSOLIDATED EDISON,
INC., CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.

Defendants.

-----X

INDEX NO. 153403/2019

MOTION DATE 01/21/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50

were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER).

On April 2, 2019, plaintiff commenced this action for personal injuries allegedly sustained after he tripped and fell over a raised metal manhole cover in the roadway of Madison Street between St. James Place and James Street (NYSCEF Doc. No. 1 [Complaint at ¶27-29]). Defendant the City of New York (the “City”) now moves, pursuant to CPLR §3212, for summary judgment dismissing this action as against it on the grounds that it did not control the subject manhole cover and did not receive prior written notice of the sidewalk defect required under Administrative Code §7-201. The City’s motion is granted on default and for the reasons set forth below.

DISCUSSION

That branch of the City’s motion which seeks to dismiss this action based on its lack of ownership or control of the subject manhole is denied. In support of this branch of its motion, the City submits an affidavit from Victor Green, a training coordinator employed by the New York City Department of Transportation (“DOT”), who attests that he

personally conducted an onsite inspection on June 7, 2019, to identify the hardware located on the roadway on Madison Street between St. James Place and James Street in the County, City, and State of New York ... [and] observed that the style and appearance of the hardware was similar to ones pointed out to me during training as typical Consolidated Edison (“Con Ed”) hardware. Additionally, I observed that this hardware is similar to ones for which I have issued NOVs, CARs and NICAs to Con Ed in the past, which have been accepted by them. Based on the forgoing and in conformity with my training and experience, this is identified as being the responsibility of the Con Ed

(NYSCEF Doc No. 47 [Green Aff. at ¶¶5-7]).

This affidavit, “standing alone, does not establish that the City did not own the grate on the date of plaintiffs accident” as it is “conclusory [and fails to] ... explain how his training and experience led him to the conclusion that the City does not own the grate” (Hawkins v The City of New York, 2019 NY Slip Op 30957[U], 1 [Sup Ct, NY County 2019] [internal citations omitted]). In addition, the affidavit fails to address whether the City owned or controlled the manhole on the date of the subject accident, a critical question (Id.).

That branch of the City’s motion based upon Administrative Code §7-201(c)(2) is granted, however. That provision states, in pertinent part, that:

No civil action shall be maintained against the city for damage to property or injury to person or death 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 fifteen 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.

(Administrative Code 7-201[c][2]).

“Where, as here, a municipality has enacted a prior written notice statute, it may not be subject to liability for personal injuries caused by a defective street or sidewalk condition absent proof of prior written notice ... [unless] the locality created the defect or hazard through an affirmative act of negligence ... [or] a special use confers a special benefit upon the locality” (Martin v City of New York, 191 AD3d 152, 153 [1st Dept 2020] [internal citations and quotations omitted]).

The City has established it did not have the requisite prior written notice through the affidavit of Henry Nnamdi, a paralegal working for the DOT. Nnamdi attests that he searched the DOT records relating to the site of plaintiff’s accident for the two years prior to and including the date of plaintiff’s accident (NYSCEF Doc. No. 45 [Nnamdi Aff. at ¶¶3-4]). None of the records produced by this search could qualify as written notice of the allegedly defective manhole at issue (See Gray v City of New York, 195 AD3d 538 [1st Dept 2021]). Accordingly, the burden shifts to plaintiff to submit evidence in admissible form creating a question of fact as to whether the City had prior written notice of the manhole cover or otherwise caused or created the subject condition (See Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). Plaintiff has not done so having failed to submit any opposition papers.

Accordingly, it is

ORDERED that the City’s motion for summary judgment dismissing the complaint as against it is granted and the complaint is hereby dismissed in its entirety as to the defendant the City of New York; and it is further

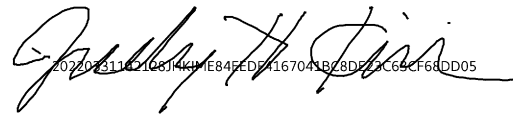
ORDERED that within twenty days of entry, counsel for defendant the City of New York shall serve a copy of this order with notice of its entry upon all parties and upon the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 158M) in

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 this court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that upon proof of service of a copy of this order with notice of entry upon all parties, the Clerk of the Court is directed to enter judgment dismissing the complaint in its entirety as against defendant the City of New York and to amend the court’s records to reflect the change in the caption herein; and it is further

ORDERED that since the City is no longer a party to this action, the Trial Support Office shall reassign this action to the inventory of a non-City Part

This constitutes the decision and order of the Court.



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JUDY H. KIM, J.S.C.

3/31/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE