

Cherif v City of New York
2022 NY Slip Op 30950(U)
March 24, 2022
Supreme Court, New York County
Docket Number: Index No. 155592/2018
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

AHOUA CHERIF,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE CITY OF NEW YORK
(DEPARTMENT OF PARKS AND RECREATION)

Defendants.

-----X

INDEX NO. 155592/2018
MOTION DATE 01/25/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for JUDGMENT - SUMMARY

Upon the foregoing documents, defendants' motion for summary judgment is denied.

On or about November 10, 2017, plaintiff served a notice of claim on defendant the City of New York (the "City") alleging that on September 15, 2017 she tripped and fell at the Bushman Steps at West 157th Street between St. Nicholas Avenue and Edgecombe Avenue due to a "narrow, uneven, irregular, defective, dangerous, hazardous and unsafe condition" on those steps (NYSCEF Doc. No. 17 [Notice of Claim at p.1]). More specifically, she asserts that "the third (3rd) step is narrow and is eight (8") inches in depth and the second (2nd) and fourth (4th) steps are twelve (12") in depth" (Id.).

Plaintiff's notice of claim also asserted that defendants were negligent in

the ownership, operation, management, maintenance, and control of the public steps and/or stairway, and more particularly the third step to Edgecombe Avenue ... in that they caused, allowed and permitted the said public steps thereat to be, become and remain in a narrow, uneven, irregular, defective, dangerous, hazardous and unsafe condition and to be so maintained as to prevent safe passage over and along the same by pedestrians

(Id. at pp. 1-2)].

On June 13, 2018, plaintiff commenced the instant action by summons and complaint, alleging facts identical to those in her notice of claim (See NYSCEF Doc. No. 1 [Complaint at ¶¶25-26]). Defendants now moves, pursuant to CPLR §3212, to dismiss this action on the grounds that defendants did not receive prior written notice of the dangerous condition and are therefore exempted from liability by Administrative Code §7-201. In opposition, plaintiff does not dispute that defendants did not receive this notice but contends that no such notice is necessary because her claim is for negligent construction of the subject stairs. In reply, defendants argue that plaintiff's notice of claim does not assert that the stairs were negligently constructed¹.

DISCUSSION

Section 7-201 of the Administrative Code of the City of New York provides, 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]).

“However, prior written notice [of a defective, unsafe, dangerous or obstructed condition] is not required if the defendant caused or created the alleged defect” (Cabrera v City of New York,

¹ Defendants also note that plaintiff's opposition was submitted three days past the deadline set out in the parties' so-ordered stipulation (NYSCEF Doc. No. 27). However, this minimal delay has not prejudiced defendants and plaintiff's dilatory filing is therefore excused (CPLR §§2004, 2014).

21 AD3d 1047, 1048 [2d Dept 2005] [internal citations and quotations omitted]). This exception includes allegations of a defendant’s negligent design or negligent construction of the defect (See e.g., Carlucci v Vil. of Scarsdale, 104 AD3d 797 [2d Dept 2013]; Donnellan v City of New York, 112 AD3d 780, 782 [2d Dept 2013]). Here, contrary to defendants’ contention, plaintiff’s notice of claim sufficiently alerts defendants to her claim for their negligent construction of the subject stairs.

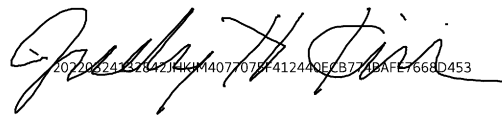
“General Municipal Law § 50–e(2) sets forth the criteria for the contents of a notice of claim ... [including] the nature of the claim and the time when, the place where, and the manner in which it arose” (DeLeonibus v Scognamillo, 183 AD2d 697, 698 [2d Dept 1992]). However, “courts have not interpreted the statute to require that a claimant state a precise cause of action *in haec verba* in a notice of claim” (O’Connor v Huntington U.F.S.D., 87 AD3d 571, 571 [2d Dept 2011] quoting DeLeonibus v Scognamillo, 183 AD2d 697, 698 [2d Dept 1992]). With this generous standard in mind, the Court determines that plaintiff’s assertion in her notice of claim that defendants “caused ...the said public steps thereat to be ... in a narrow, uneven, irregular, defective, dangerous, hazardous and unsafe condition” sufficiently notified defendants of plaintiff’s negligent construction claim (See Russell v New York City Hous. Auth., 194 AD2d 506, 506 [1st Dept 1993] [“the fact that plaintiff asserted that the walkway/ramp was ‘defective’ indicated that it was likely that she would claim a design defect or negligent construction of the ramp”]). Accordingly, plaintiff’s failure to allege or prove that defendants received prior written notice of the allegedly defective stair does not mandate dismissal of this action (See Braver v Vil. of Cedarhurst, 94 AD3d 933 [2d Dept 2012]).

Accordingly, it is

ORDERED that defendants’ motion for summary judgment is denied; and it is further

ORDERED that within twenty days of entry, plaintiff shall serve a copy of this decision and 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).

This constitutes the decision and order of the Court.



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3/24/2022

DATE

JUDY H. KIM, 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