SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART 52**

Justice

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TYJONKA RATLIFF, AS THE ADMINISTRATRIX OF THE ESTATE OF ALEXANDER RATLIFF, DECEASED,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, 190 EAST 72ND CORP, SOL GOLDMAN INVESTMENTS LLC

Defendant.

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INDEX NO. 400462/2013

MOTION DATE 02/01/2022

MOTION SEQ. NO. 005

AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for SUMMARY JUDGMENT.

This action arises out of injuries allegedly sustained by original plaintiff Alexander Ratliff (Plaintiff)[1] on January 26, 2012. (*See* Plaintiff's Exhibit A, Notice of Claim). Plaintiff alleges that he tripped and fell on a "cracked, broken and uneven curb and sidewalk" in between 1230 3rd Avenue and 1244 3rd Avenue, New York, New York. (*Id.* at 3). Per the attorney for defendants 190 East 72nd Corp and Sol Goldman Investments LLC (Goldman Defendants), the property abutting the sidewalk is a mixed commercial and residential building, whereby the land is owned by the Estate of Sol Goldman and leased to defendant 190 East 72nd Corp. (*See* Colin Affirmation in Opposition at ¶ 3).

Defendants the City of New York and the New York City Department of Transportation (the City) move for summary judgment seeking an Order dismissing the complaint. The City claims that it is not responsible for the maintenance and repair of the subject sidewalk, pursuant to Administrative Code of

[1] Plaintiff passed away, unrelated to the incident, and the caption was amended to substitute Tyjonka Ratliff, as the Administratrix of the Estate of Alexander Ratliff, deceased, in place of plaintiff.

the City of NY § 7-210. The City also argues that it did not have prior written notice of a defective condition on the curb, as required pursuant to Administrative Code § 7-201, and that it did not cause or create the defective condition.

Neither plaintiff nor Goldman Defendants oppose that portion of the City's motion based upon City's lack of responsibility to maintain and repair the sidewalk pursuant to Administrative Code § 7-210. Accordingly, the City has established its entitlement to judgment as a matter of law with respect to any alleged sidewalk defect.

Plaintiff and Goldman Defendants do oppose the instant motion with respect to Administrative Code § 7-201, contending that the City received notice of a defective curb condition. Specifically, plaintiff and Goldman Defendants argue that the City had prior notice that a tree was uplifting the sidewalk and of the alleged section of broken, misaligned, or uneven curb near the subject premises.

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). As such, 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 should not be granted where there is any doubt as to the existence of issues of fact. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990), citing *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 (1st Dept 1989).

To hold the City liable for injuries resulting from curb defects, a plaintiff must demonstrate that the City has received prior written notice of the subject condition. *See* Administrative Code § 7-201; *Amabile v City of Buffalo*, 93 NY2d 471 (1999). The only exceptions to the prior written notice requirement are where the municipality itself created the defect through an affirmative act of negligence or where the defect resulted from a special use by the municipality. *See Yarborough v City of New York*, 10 NY3d 726 (2008); *Amabile v City of Buffalo*, 93 NY2d 471(1999).

In support of its motion, the City submits affidavits by record searchers employed by New York City Department of Transportation (Exhibit N, Bhowmick aff), based on the location of the incident, and the Department of Parks and Recreation (Exhibit O, Lai aff), given the accident's proximity to a tree well. Through its affiants, the City avers that both searches yielded no records, and that the City did not have prior written notice of the specific defect that caused plaintiff's accident.

In opposition, Goldman Defendants submit a letter dated July 2, 2010, from Century Management Operations Inc., the managing agent for Goldman Defendants, to the NYC Dept. of Parks and Recreation that states: "Please be advised that some of the trees in the sidewalk between 1238 and 1246 3rd Ave. are lifting up the sidewalk." (*See* Colin Affirmation in Opposition, Exhibit A). However, such letter references the sidewalk area, not the curb. As the letter only mentions the sidewalk area, it is is insufficient to provide specific notice of a curb defect. *See Hued v City of New York*, 170 AD3d 571 (1st Dept 2019) (holding that "[t]he City's awareness of one defect in the area is insufficient to constitute notice of another defect that caused the accident"); *see also Harvey v Henry 85 LLC*, 171 AD3d 531 (1st Dept 2019).

Nevertheless, plaintiff successfully raises a triable of fact as to prior written notice through its submission of the Big Apple Map (BAM). (*See* Jen Affirmation in Opposition, Exhibit B). The City concedes that its DOT search revealed two BAMs for the subject location, including the map to which plaintiff refers. (*See* Notice of Motion, Exhibit M). The BAM for the subject location shows a symbol that

corresponds to "an extended section of broken, misaligned, or uneven curb." (*See* Notice of Motion, Exhibit M, DOT Search, Key to Map Symbols). Plaintiff and Defendants disagree as to whether the curb defect at the subject location is a "broken, misaligned, or uneven curb" or an "extended section of broken, misaligned, or uneven curb," which are represented by different symbols on the BAM.

The City argues that the photos in the Notice of Claim show that the alleged defect is a limited crack in the sidewalk and curb. (*See* Plaintiff's Exhibit A, Notice of Claim). Therefore, the City maintains that the symbol for "broken, misaligned, or uneven curb" would apply in this case, rather than one for an "extended section" of curb, as prior written notice must be notice of the specific defective condition alleged. *See D'Onofrio v City of New York, et al*, 11 NY3d 581 (2008). On the other hand, plaintiff contends that the photographs reveal that the curb condition is an extended section of curb, which appears to be one foot in length. Viewing the photographs in the light most favorable to the non-moving parties, a material issue of fact exists as to whether the defect which caused plaintiff's purported injuries is an "extended section" of sidewalk, thereby giving the requisite prior written notice to the City.

Accordingly, it is ORDERED that the City's motion for summary judgment with respect to Administrative Code § 7-210 is granted, and that cause of action is dismissed, and it is further

ORDERED that the City's motion for summary judgment to dismiss plaintiff's cause of action under Administrative Code § 7-201 is denied.

The foregoing constitutes the Amended Decision and Order of the Court.

3/31/2022
DATE

HON. LESLIE A. STROTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE