

Nunez-Polanco v City of New York
2022 NY Slip Op 31432(U)
May 2, 2022
Supreme Court, New York County
Docket Number: Index No. 153895/2016
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

ELVA NUNEZ-POLANCO,

Plaintiff,

- v -

THE CITY OF NEW YORK, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., EDISON COMPANY OF NEW YORK, INC, EMPIRE CITY SUBWAY COMPANY (LIMITED), FIAZ AHMED D/B/A U.S.A. ONE CONSTRUCTION CO., SAFEWAY CONSTRUCTION ENTERPRISES, LLC, CITYWIDE PAVING INC., A/K/A NICO ALPHALT PAVING, INC.,

Defendants.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Plaintiff,

-against-

SAFEWAY CONSTRUCTION ENTERPRISES, INC., CITYWIDE PAVING, INC.

Defendants.

-----X

INDEX NO. 153895/2016
MOTION DATE 02/18/2022
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 596023/2017

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff commenced this action for personal injuries she allegedly sustained on October 13, 2015, when she allegedly tripped and fell over a wooden railroad tie in the road while exiting a taxi cab at Audubon Avenue near its the intersection with West 187th Street. Defendant the City of New York (the "City") now moves, pursuant to CPLR §3212, for an order granting it summary

judgment dismissing this action on the grounds that the City did not receive prior written notice of the wooden railroad tie at issue as required by Administrative Code §7-201.

In support of its motion, the City submits an affidavit by Earnestine Bell, an employee at the New York City Department of Transportation (“DOT”), attesting that she made two searches of DOT records for a period of two years prior to and including October 13, 2015 for the roadway located at Audubon Avenue between West 187th Street and West 188th Street and detailing the records uncovered as a result and the records themselves (NYSCEF Doc. Nos. 62-63).

DISCUSSION

Administrative Code of the City of New York §7-201 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]).

The City has met its prima facie burden through its submission of the affidavit of Bell detailing the DOT records produced by her search (NYSCEF Doc. No. 65 [Bell Aff.]), the DOT records in question (NYSCEF Doc. No. 62 [City’s CSO Response with DOT Records annexed]), and the affirmation of the City’s counsel (Kuhn Affirm. in Supp. at ¶¶19-31) establishing that, as a matter of law, none of these records provided the City with written notice of the wooden railroad

tie at issue in plaintiff's complaint (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 that raises a question of fact as to whether the City had notice or caused or created the subject condition (See Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). Plaintiff has failed to do so having failed to submit any opposition papers.

In light of the foregoing, it is

ORDERED that defendant the City of New York's motion for summary judgment is granted and this action is dismissed with prejudice as to defendant the City of New York; and it is further

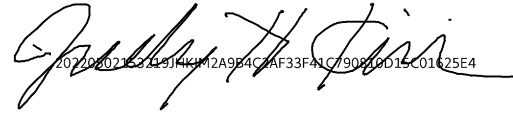
ORDERED that within thirty days from entry of this order, counsel for the City of New York shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 158M); and it is further

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 "Efiling" page on this court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that 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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5/2/2022
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