

Echevarria v City of New York
2022 NY Slip Op 32596(U)
July 29, 2022
Supreme Court, New York County
Docket Number: Index No. 450480/2020
Judge: J. Machelie Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART 62
Justice
-----X MOTION SEQ. NO. 005
ERMELINDO ECHEVARRIA,
Plaintiff, INDEX NO. 450480/2020

- v -

CITY OF NEW YORK, NEW YORK CITY HOUSING
AUTHORITY

**DECISION + ORDER
ON MOTION #005**

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 005) 77-98, 121-127
were read on this motion to/for SUMMARY JUDGMENT

In the underlying action, plaintiff claims to have sustained injuries after a trip and fall on
December 31, 2018 in New York, New York.

Pending before the court is a motion wherein defendants THE CITY OF NEW YORK and
THE NEW YORK CITY HOUSING AUTHORITY (collectively, the "City") seek an order,
pursuant to Civil Practice Law and Rules ("CPLR") Section 3212, granting summary judgment in
favor of the City.

Standard for Summary Judgment

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 N.Y.2d
395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [Sup. Ct. App.
Div. 1st Dept. 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 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 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 A.D.2d 520 [Sup. Ct. App. Div. 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 N.Y.2d 395 [NY Ct. of Appeals 1957]).

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Alvarez v Prospect Hosp., 68 NY2d 320 [N.Y. Ct. of Appeals 1986]).

Further, pursuant to the New York Court of Appeals, “We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form;

mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (Zuckerman v City of New York, 49 NY2d 557 [N.Y. Ct. of Appeals 1980]).

Motion #004

In a Decision and Order on Motion #004, dated June 3, 2022, this court denied plaintiff’s motion seeking leave of court to change the “Accident Location” in the notice of claim from 217 Eldridge Street in the City, County, and State of New York, to a different location.

City’s Prima Facie Case

The City argues that they should be granted summary judgment because the Accident Location is not owned by either of the City of New York or the New York City Housing Authority and that the Accident Location does not fall within any of the exemptions set forth in Section 7-210 of the Administrative Code of the City of New York, as the property is not a one-, two-, or three-family home exclusively used for residential use; and the City did not cause or create the alleged condition.

In support of their argument, the City submitted a sworn Affidavit by David Schloss, Senior Title Examiner for the New York City Law Department, (NYSCEF Document #98), who conducted a title search for 217 Eldridge Street. The title search revealed the record title for 217 Eldridge was held by 57 Fusion LLC, pursuant to a deed recorded in April 21, 2003. The City argues that Mr. Schloss’s search establishes conclusively that the Accident Location is not owned by either of the City entities.

The City also submitted a sworn Affidavit by David Atik, employed by the City of New York, Finance Department, (NYSCEF Document #97), who conducted a search of the Property Tax System (hereinafter “PTS”) database for records relating to 217 Eldridge Street, New York, New York. Mr. Atik’s search revealed that on December 31, 2018, neither the City of New York nor the New York City Housing Authority was the owner of the property located at 217 Eldridge Street; and the subject property was classified as Building Class S9 (residential with stores/offices), and not as a one-, two-, or three-family solely residential property.

Finally, the City submitted a sworn Affidavit by Sharabanti Aich, (NYSCEF Document #96), a paralegal at the Department of Transportation of the City of New York, who personally conducted a search for two years prior to and including plaintiff’s alleged date of incident for “permits, applications for permits, OCMC files, CARs, NOVs, NICAs, inspections, maintenance and repair orders, sidewalk violations, contracts, complaints, and Big Apple Maps for the sidewalk located at Eldridge Street between Stanton Street and Rivington Street (side of 217 Eldridge Street), in the County, City, and State of New York.” The City argues that the results of Ms. Aich’s search shows that the City did not cause any defect to be created at the Accident Location.

Section 7-210 of the Administrative Code of the City of New York, 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 further indicates 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.” *Id.*

This court finds, that the City defendants satisfied their *prima facie* burden for summary judgment. The burden now shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact.

Opposition and Court’s Analysis and Conclusions of Law

In his opposition papers, plaintiff does not dispute the City defendants’ central contention that the Accident Location is not owned by either the City of New York or the New York City Housing Authority. Plaintiff also does not dispute that the Accident Location does not fall within any of the exemptions set forth in Section 7-210 of the Administrative Code of the City of New York. Instead, plaintiff argues that liability to defendants should attach, because the accident happened in a place different from the Accident Location and in a place “between several addresses.”

As noted above, the burden shifted to plaintiff to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial of the action. In opposition, plaintiff fails to provide any evidence to rebut the City’s position that liability shifted to the abutting property owner. Plaintiff also fails to proffer any evidence to suggest that the City caused or created the alleged defect. This court finds that plaintiff has failed to meet his burden to rebut the City’s *prima facie* case.

Conclusion

Accordingly, it is hereby:

ORDERED that this motion is GRANTED; and it is further

ORDERED that the complaint is dismissed, with prejudice, as against all defendants.

7/29/2022

DATE

J. MACHELLE SWEETING, 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