

Zakarin v City of New York

2022 NY Slip Op 32622(U)

August 3, 2022

Supreme Court, New York County

Docket Number: Index No. 152949/2017

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

Justice

-----X

JESSE ZAKARIN,

Plaintiff,

- v -

THE CITY OF NEW YORK, TROCOM CONSTRUCTION CORP., TROCOM CONSTRUCTION OF NEW YORK LLC, CROWN CASTLE NG EAST, LLC, CROWN CASTLE NG NETWORKS LLC,

Defendants.

-----X

TROCOM CONSTRUCTION CORP., TROCOM CONSTRUCTION OF NEW YORK LLC,

Plaintiffs,

-against-

HYLAN DATACOM AND ELECTRIC,

Defendant.

-----X

INDEX NO. 152949/2017

MOTION DATE 05/17/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

Third-Party Index No. 595661/2020

The following e-filed documents, listed by NYSCEF document number (Motion 004) 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 200, 203, 206

were read on this motion for SUMMARY JUDGMENT.

The motion by defendant the City of New York (the "City") for summary judgment dismissing this action and all cross claims as against it is granted on default and for the reasons set forth below.

On March 29, 2017, plaintiff commenced this negligence action for injuries allegedly sustained on October 4, 2016, when a defective roadway condition located on South Street between

Fletcher Street and Maiden Lane caused him to lose control of the Vespa he was driving (NYSCEF Doc. No. 1 [Complaint]). At his GML §50-h hearing, plaintiff specified that the defective condition was “very unstable concrete that was broken in a lot of places ... [and] that the street was completely uneven ... [and] several inches higher on the left than the right, which is where the broken concrete was” (NYSCEF Doc. No. 150 [GML §50-h Tr. at pp. 14-16]).

In support of its motion the City submits: (1) the affidavit of George Gudushauri, a paralegal working at the Department of Transportation of the City of New York (“DOT”), attesting that he conducted a search of DOT records and Big Apple Maps for the two years prior to and including the date of plaintiff’s accident for: (1) the roadway located at the intersection of South Street and Maiden Lane; and (2) the roadway located at South Street between John Street and Maiden Lane (NYSCEF Doc. No. 170 [Gudushauri Aff.]). He further attests that these searches produced: one hundred fifty six applications; three hardcopy Office of Construction Mitigation and Coordination files; one Corrective Action Requests; one Notice of Violation, one hundred twenty five inspections; ten Maintenance and Repair Orders/Records, ten complaints; eleven gangsheets for roadway defects; nine handwritten gangsheets for roadway defects; sixteen permits; sixteen hardcopy permits; one Special Events Report and two Big Apple Maps (Id. at ¶¶1, 3-6]). The City attached these records to its motion (See NYSCEF Doc. Nos. 157-166).

DISCUSSION

“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” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

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]).

Here, the City has established that it did not receive the written notice required by Administrative Code §7-201 through its submission of Gudushauri's affidavit and the attached DOT records produced by his search (See Gray v City of New York, 195 AD3d 538 [1st Dept 2021]). Plaintiff has not submitted any opposition to rebut the City's prima facie case.

In light of the foregoing, it is

ORDERED that defendant the City of New York's motion for summary judgment is granted and the complaint and all cross claims are dismissed as to 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 Clerk of the General Clerk's Office (60 Centre St., Rm. 119) who are directed to enter judgment accordingly; 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 “E-Filing” page on this court’s website at the address www.nycourts.gov/suptmanh).

This constitutes the decision and order of the Court.



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8/3/2022
DATE

CITY TRIAL READINESS PART, 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