

Crawford v Battery Park City Auth.
2022 NY Slip Op 32644(U)
August 8, 2022
Supreme Court, New York County
Docket Number: Index No. 150559/2021
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

CHRISTOPHER CRAWFORD,

Plaintiff,

- v -

BATTERY PARK CITY AUTHORITY, HUDSON RIVER
PARK TRUST, THE CITY OF NEW YORK

Defendants.

-----X

INDEX NO. 150559/2021

MOTION DATE 05/03/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 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, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion for SUMMARY JUDGMENT.

Plaintiff commenced this action to recover for injuries allegedly sustained on May 23, 2020, when he slipped and fell while jogging due to a defective sidewalk condition. Plaintiff asserts negligence claims against each defendant, alleging that they operated, maintained, controlled, or managed the area at issue and were negligent in maintaining the subject sidewalk (NYSCEF Doc. No. 1 [Complaint]). Plaintiff's complaint and notice of claim identify the location of his fall as "the pedestrian esplanade located at Hudson River Park with approximate coordinates: (40°43'05.8"N; 74°00'47.4"W)" (*Id.* at ¶11; NYSCEF Doc. No. 15 [Notice of Claim]). At his GML §50-h hearing on December 28, 2020, plaintiff testified that he was turning left from North Esplanade to enter Hudson River Park when he tripped on a bump between two horizontal concrete "blocks" (NYSCEF Doc. No. 16 [GML §50-h Tr. at pp. 15-16, 42]).

On September 20, 2021, defendant the City of New York (the “City”) moved for an order, pursuant to CPLR §3212, granting it summary judgment dismissing this action as against it. In support of its motion, the City submits a printout of a Google map with a “pin” marking the coordinates set forth in plaintiff’s notice of claim and complaint. Notably, this “pin” falls within the bounds of North Esplanade and is a number of feet southeast of the concrete blocks identified by plaintiff at his GML §50-h hearing as the location of his fall. These concrete blocks are situated by the northern boundary of North Esplanade.

The City also submits the affidavit of David Schloss, a Senior Title Examiner employed by the New York City Law Department, dated September 10, 2021, in which he attests that he:

conducted a title search for a portion of the Hudson River Park pedestrian Esplanade (North Esplanade) located west of West Street, north of Chambers Street, and south of Harrison Street, and being designated on the tax map as Block 16, Lot 3. Record title for New York Block 16, Lot 3 on May 23, 2020, was in the Battery Park City Authority, pursuant to a deed recorded February 4, 1983, in Reel 665, Page 1024

(NYSCEF Doc. No. 23 [Schloss Aff. at ¶¶2-3]).

The City attaches the tax map and deed referenced by Schloss (NYSCEF Doc. Nos. 24 and 25). The City contends that these submissions establish that it did not own or control the site of plaintiff’s fall and had no duty to maintain that area.

Defendant Hudson River Park Trust (“HRPT”) cross-moves for summary judgment, adopting the City’s arguments. In further support of its cross-motion, HRPT submits an affidavit of Nicole Cuttino, its Deputy General Counsel, attesting that:

Hudson River Park is a waterside park on the Hudson River, that has a northern boundary of 59th Street and 59th Street extended, and extends south to the northern seawall of Battery Park City ...

HRPT does not own any of the land associated with the Hudson River Park. Rather, park land south of 35th Street is generally owned by New York State; and land north of 35th Street is generally owned by New York City. This was established

within the Hudson River Park Act. HRPT maintains a possessory interest only over the premises delineated within the Act.

Upon information and belief, the area where the alleged incident occurred, “Hudson River Park with approximate coordinates: (40°43’05.8”N; 74°00’47.4”W), County of New York, City and State of New York” is not actually within the Hudson River Park that HRPT maintains a possessory interest over.

...

HRPT has no contract with any entity which would make it responsible for the area of plaintiffs alleged accident, which upon information and belief is owned by BPCA, inclusive of any contract which would provide for indemnification or insurance procurement.

(NYSCEF Doc. No. 41 [Cuttino Aff. at ¶¶4-7, 9]). HRPT also submits a copy of the Hudson River Park Act (NYSCEF Doc. No. 42).

In opposition to the City’s motion and HRPT’s cross-motion, defendant Battery Park City Authority submits the affidavit of Gwen Dawson, Vice President of Real Property, in which she attests that:

Based upon my review of a deed recorded on February 4, 1983 (the “1983 Deed”), publically [sic] available tax documents, and a relevant portion of a survey of BPCA’s property dated July 13, 2015 (the “2015 Survey”), I am familiar with the boundaries of real property on the lower west side of Manhattan to which BPCA holds title. Both the 1983 Deed and the 2015 Survey are documents kept in the regular course of business by BPCA. Annexed hereto as Exhibit “1” is the 1983 Deed and as Exhibit “2” is the 2015 Survey.

On its face, the recorded deed of 1983 shows that the eastern-most boundary of the BPCA’s property lies to the west of, and excludes, the former marginal street running north-south to the west of West Street/Route 9A. This is also defined by the U S. Bulkhead line approved by the Secretary of War, July 31, 1941. Therefore, property to the East of that line is not owned by BPCA. These boundaries are corroborated by the survey of July 2015.

I have seen the google maps results annexed to the City’s Motion as Exhibit H (NYSCEF Doc. No. 22) and annexed to HRPT’s Cross-Motion as Exhibit F (NYSCEF Doc. No. 37). This area is East of the U S. Bulkhead line and not owned by BPCA ...

(NYSCEF Doc. No. 61 [Dawson Aff. at ¶¶3-6] [emphasis added]).

BPCA also submits the affidavit of Ryan Torres, its Vice President of Park Operations, who attests that:

The location of the pavers and caulking identified in ... Plaintiff's 50H [testimony] ... is at the Northern Seawall. Moreover, the caulking and/or material circled between the pavers is a part of the pavers that continue north to the Hudson River Greenway. These pavers, continuing north of the Northern Seawall, along with the caulking/or joint compound, are not maintained by BPCA. Therefore, and upon my review of said material and my experience in with BPCA, the circled alleged defect is not maintained by BPCA.

I have also reviewed a Google Maps photograph, which is Exhibit H and Exhibit F, from the City's and HRPT's Motions. This location, identified by the GPS coordinates in those photographs, is not the exact same area from the alleged defect circled in Exhibit 2 of the 50H. The Google Maps photograph depicts an area that is located slightly south of the circled alleged defect from Plaintiff's 50H. Based on the foregoing, BPCA does not maintain the circled defect at the alleged location.

(NYSCEF Doc. No 60 [Torres Aff. at ¶¶4-9]).

Plaintiff and BPCA argue, in their oppositions to the motion and cross-motion, that plaintiff's GML §50-h testimony and BPCA's evidentiary submissions raise a question of fact as to the owner of the location of plaintiff's fall¹. In reply, the City maintains that plaintiff and BPCA cannot argue that plaintiff's fell at any location other than the GPS coordinates set forth in plaintiff's pleadings.

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. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]). "On a motion for summary judgment, facts

¹ HRPT notes that plaintiff's opposition was filed a day after the date agreed-upon by the parties (NYSCEF Doc. No. 87 [So-Ordered Stipulation]). However, the Court finds no evidence that this de minimis delay prejudiced any party and, therefore, excuses it (See CPLR §§2004, 2214[c]).

must be viewed in the light most favorable to the non-moving party” (Sosa v. 46th Street Development LLC, 101 AD3d 490, 492 [1st Dept 2012]).

“To establish a prima facie case of negligence, a plaintiff must show a duty owed, a breach thereof, and proximate cause. When it is alleged that there exists a dangerous or defective condition on the premises, a duty arises from occupancy, ownership, control, or a special use of the premises” (Cross v City of New York, 32 Misc 3d 1219(A) [Sup Ct, NY County 2011] [internal citations omitted]; see also Balsam v Delma Eng'g Corp., 139 AD2d 292, 296 [1st Dept 1988]). The movants argue that this action should be dismissed against them because the City has established that BPCA has exclusive ownership and control over North Esplanade “west of West Street, north of Chambers Street, and south of Harrison Street”—the area encompassing the coordinates set out in plaintiff’s pleadings and therefore the City and HRPT do not owe a duty to plaintiff. However, as BPCA notes, the deed submitted by the City—and relied upon by its Senior Title Examiner—suggests that BPCA does not, in fact, own this area.

In any event, the resolution of this issue would not resolve this motion, because plaintiff’s GML §50-h testimony indicates that he fell at or beyond the northern boundary of North Esplanade, and neither movant has submitted any evidence regarding the ownership and control of this area. The determination of this potentially dispositive issue requires discovery. Accordingly, the City’s motion for summary judgment is denied, as is HRPT’s cross-motion for summary judgment (See e.g., Reid v City of New York, 168 AD3d 447, 447-48 [1st Dept 2019] [motion court properly denied motion where full responses to discovery demands pertinent to the issues of ownership, control and maintenance of premises had not yet been served]).

The Court does not credit the City’s contention that plaintiff is bound by the coordinates set forth in his pleadings. While GML §50-h testimony may not be used “to amend the theory of

liability set forth in the notice of claim where ... amendment would change the nature of the claim,” such testimony is “permitted to clarify the location of an accident” (Lewis v New York City Hous. Auth., 135 AD3d 444, 445 [1st Dept 2016] [internal quotations omitted]). Here, plaintiff’s GML §50-h testimony provided just such clarification. Accordingly, the Court discerns no prejudice to movants in plaintiff and BCPA’s reliance on this testimony in their opposition to the motion and cross-motion, particularly since the coordinates set out in plaintiff’s pleadings were at all times pleaded as approximate and movants were aware of plaintiff’s testimony as to the precise location of his fall for nearly ten months before they filed the instant motions.

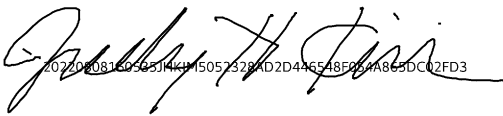
In light of the foregoing, it is

ORDERED that the City of New York’s motion for summary judgment is denied; and it is further

ORDERED that the Hudson River Park Trust’s cross-motion for summary judgment is denied; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this decision and order with notice of entry upon all defendants within ten days of the date of this decision and order.

This constitutes the decision and order of the Court.

<u>8/8/2022</u>			
DATE		HON. 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