

Paulino v 1995 Amsterdam LLC
2022 NY Slip Op 33035(U)
September 2, 2022
Supreme Court, New York County
Docket Number: Index No. 161554/2018
Judge: Leslie A. Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE STROTH

PART

52

Justice

-----X

KERENSA PAULINO,

Plaintiff,

- v -

1995 AMSTERDAM LLC, NYC 159 FOODS INC.,

Defendant.

-----X

NYC 159 FOODS INC.

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF
TRANSPORTATION, XYZ CORPORATION

Defendant.

-----X

NYC 159 FOODS INC.

Plaintiff,

-against-

FOREVIEW DEVELOPMENT INC.

Defendant.

-----X

INDEX NO. 161554/2018MOTION DATE 05/13/2022MOTION,SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595299/2020

Second Third-Party
Index No. 595332/2022

The following e-filed documents, listed by NYSCEF document number (Motion 005) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 133

were read on this motion to/for

JUDGMENT - SUMMARY

This is an action to recover monetary damages for personal injuries allegedly sustained by plaintiff Kerensa Paulino (plaintiff). Plaintiff alleges that on January 27, 2018, she tripped and fell on the sidewalk on Amsterdam Avenue abutting a building located at 1995 Amsterdam Avenue. Defendants 1995 Amsterdam, LLC (1995 Amsterdam) served an answer with cross-claims on

January 30, 2019. Defendants NYC 159 Foods Inc. (NYC 159 Foods) served an answer with cross-claims on or about February 11, 2019.

On May 14, 2020, NYC 159 Foods filed a third-party complaint against the City. The third-party complaint alleges that the City entered into an agreement with “XYZ Corporation” for the installation of a new sidewalk in front of the subject building. Third-party defendants, the City of New York and New York City Department of Transportation (together, the City) move for an order granting summary judgment its favor dismissing the third-party complaint against it.

The City argues that the liability shifting provision of New York Administrative Code § 7-210¹ applies here, and it is not responsible for the maintenance of sidewalk at issue. The City correctly notes that the owner of the real property abutting the public sidewalk has the duty to maintain such sidewalk in a reasonably safe condition. *See* Administrative Code § 7-210. Plaintiff does not oppose the motion and agrees that the City does not belong as a party to this case. Third-party plaintiff NYC 159 Foods did not file any opposition to the instant motion.

In support of its motion, the City submits, *inter alia*, the summons and complaint with photos of the accident location (Exhibit A); plaintiff’s deposition testimony (Exhibit G); and an affidavit by David Atik, an employee of New York City’s Department of Finance (Exhibit K). The summons and complaint and plaintiff’s deposition testimony establish that plaintiff’s accident occurred on the sidewalk in front of the premises at 1995 Amsterdam Avenue. As explained in his

¹ Pursuant to Administrative Code § 7-210:

Notwithstanding any other provision of law, 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. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This 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.

affidavit, Mr. Atik attests that the City is not the owner of the property at 1995 Amsterdam Avenue and that the building is not classified as a solely one-, two-, or three- family residential property. (See Exhibit K).

The allegation by NYC 159 Foods that the City had a contract with XYZ corporation for the installation of a new sidewalk is unavailing. See Exhibit E. To date, NYC 159 Foods has not been able to provide the contract, the name of the contractor, or provide any evidence that the City did work in this location. These conclusory statements do not create questions of fact and are insufficient to defeat the City's motion for summary judgment. The City has established it is not liable for Plaintiff's injuries, because it does not own the abutting property nor is this property exempt from the liability shifting provision of Administrative Code § 7-210.

Therefore, it is

ORDERED that the motions for summary judgment by defendants City of New York and New York City Department of Transportation are granted and the third-party complaint is dismissed against them; and it is further

ORDERED that the said claims against City of New York and New York City Department of Transportation are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants City of New York and New York City Department of Transportation dismissing the claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, because Corporation Counsel no longer represents a party to this action, this action, including any pending motions, is transferred to a General IAS Part; and it is further

ORDERED that counsel for the movant shall serve a copy of this Order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the Court's records to reflect the change; 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 Protocols on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the Court's website at the address www.nycourts.gov/supctmanh).

The foregoing constitutes the decision and order of the Court.

<u>9/2/2022</u>			
DATE		LESLIE A. STORCH, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ DENIED	☐ SUBMIT ORDER	
	☐ SETTLE ORDER	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE
CHECK IF APPROPRIATE:	☒ INCLUDES TRANSFER/REASSIGN		