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| Elhanafy v City of New York |
| 2022 NY Slip Op 34083(U) |
| December 2, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 158770/2014 |
| Judge: Leslie A. Stroth |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART 52

Justice

-----X
MANAL ELHANAFY, ELSAID ARIF,

Plaintiff,

INDEX NO. 158770/2014
MOTION DATE 06/30/2022
MOTION SEQ. NO. 005

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF TRANSPORTATION, CHINATOWN PARTNERSHIP
LOCAL DEVELOPMENT CORPORATION A/K/A
CHINATOWN B.I.D., TRIUMPH CONSTRUCTION CORP.,
S&M ENTERPRISES LLC A/K/A PERLBINDER HOLDINGS
LLC, WON & HAR REALTY CORPORATION

**DECISION + ORDER ON
MOTION**

Defendant.
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162

were read on this motion to/for JUDGMENT - SUMMARY

Defendants the City of New York and the New York City Department of Transportation (together, the City) seek an order pursuant to CPLR 3212 granting summary judgment in their favor pursuant to Administrative Code of the City of New York § 7-210. In the instant case, plaintiff Manal Elhanafy (plaintiff) alleges that she tripped and fell due to a hole in the sidewalk in front of 242 and 244 Canal Street, New York, NY on March 28, 2014, resulting in personal injuries. Plaintiff's husband, Elsaid Arif, also brings derivative claims for loss of services, society and consortium.

The City argues that it is not liable for plaintiff's injuries, because it is not the record owner of the subject properties, and that the owners of same are not exempt from the liability shifting provision of Administrative Code § 7-210. Furthermore, the City maintains that it did not cause or create the alleged defective condition that led to plaintiff's incident.

Neither plaintiffs nor non-municipal defendants submit opposition to this motion.

It is a well-established principle that the “function of summary judgment is issue finding, not issue determination.” *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989), quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). As such, 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. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *see also Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of issues of fact. *See Sillman*, 3 NY2d at 404. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990), citing *Assaf v Ropog Cab Corp.*, 153 AD2d at 521.

Administrative Code § 7-210, provides in pertinent part that “the owner of real property abutting any sidewalk...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.” Further, “[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. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.” *Id.*

Plaintiff testified at her Examination Before Trial (EBT) that her trip and fall accident occurred between 242 and 244 Canal Street. *See* NYSCEF doc. no. 160 at 16, line 9. The City establishes through admissible evidence that the sidewalk in front of these properties was not owned by the City on the date of the incident. Regarding ownership of said properties, the City submits two affirmations of David Atik,

an attorney for the New York City Department of Finance (DOF), concerning these properties. *See* Exhibits S and T, NYSCEF doc. no. 158, 159. Mr. Atik attests that he conducted a search of the Property Tax System database which revealed that the City owned neither 242 nor 244 Canal Street at the time of the accident. *Id.* Mr. Atik also affirms that on the date of the alleged incident, 242 Canal Street was classified as “Building Class K1 (retail)” and 244 Canal Street was classified as “Building Class K9 (retail).” *Id.* Mr. Atik’s search revealed that 242 and 244 Canal Street were not classified as a one-, two-, or three- family solely residential properties at the time of the alleged accident. *Id.*

As stated above, no opposition was submitted to refute the City’s claims. Therefore, the City demonstrates *prima facie* entitlement to summary judgment by establishing: (1) the non-City ownership of the real property that abuts the sidewalk where the alleged accident occurred, and (2) the non-exempt building classification of the abutting property, pursuant to Administrative Code § 7-210.

While the City has no burden to establish its *prima facie* entitlement to summary judgment in order to prove its freedom from liability due to affirmative negligence or special use, the City has tendered evidence proving that it neither caused or created the subject sidewalk condition, nor did it at any time make special use of said sidewalk, as shown by the affidavit and search results of DOT records searcher Charlene Mui. *See* Exhibit R, NYSCEF doc. no. 157. For the foregoing reasons, the City has established that there is no triable issue of fact in this matter, and summary judgment must therefore be granted.

Accordingly, it is hereby

ORDERED that the City’s motion seeking summary judgment and dismissal of the complaint is granted. The complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption shall be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

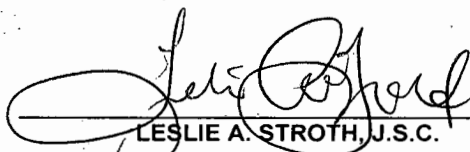
ORDERED that this action, including any pending motions, is transferred to a general IAS Part, as corporation counsel no longer represents any parties to this action; and it is further

ORDERED that counsel for the moving parties 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 in the caption herein; 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 the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

12/2/2022
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: