

Rivera v Archdiocese of N.Y.
2022 NY Slip Op 34162(U)
December 8, 2022
Supreme Court, New York County
Docket Number: Index No. 157599/2018
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

MIGDALIA RIVERA,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. LUCY'S CHURCH,
THE CITY OF NEW YORK,

Defendants.

-----X

ARCHDIOCESE OF NEW YORK, ST. LUCY'S CHURCH

Third-Party Plaintiffs,

-against-

CONSOLIDATED EDISON OF NEW YORK, INC.

Third-Party Defendant.

-----X

INDEX NO. 157599/2018
MOTION DATE 02/01/2022
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595027/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing papers, the motion by defendant the City of New York (the "City") is granted for the reasons set forth below.

On August 15, 2018, plaintiff commenced this negligence action alleging that on June 9, 2017, she tripped and fell on a sidewalk defect abutting the property located at 2017 First Avenue (Block 1675, Lot 30) in New York County (the "Property") (NYSCEF Doc. Nos. 1 [Complaint at ¶54] and 76 [Atik Aff. at ¶4]). The City now moves, pursuant to CPLR §3212, for summary

judgment dismissing plaintiff's complaint and all cross-claims against it, contending that it is exempt from liability under Administrative Code §7-210.

In support of its motion, the City submits: (1) the affirmation of David Atik, an employee of the New York City Department of Finance ("DOF"), in which he attests that a review of the DOF's Property Tax System database reveals that the Property was not owned by the City on the date of plaintiff's accident and is not classified as a one-, two-, or three-family residential property (NYSCEF Doc. No. 76 [Atik Aff. at ¶¶4-6]); (2) the affidavit of David Schloss, Senior Title Examiner for the New York City Law Department, attesting to a title search revealing that defendant St. Lucy's Church held title to the Property at the time of plaintiff's accident (NYSCEF Doc. No. 75 [Schloss Aff. at ¶¶2-3]); (3) the affidavit of Henry Williams, an employee for the New York City Department of Transportation ("DOT"), detailing the results of his search of DOT records for the sidewalk of the west side of First Avenue, between East 103rd Street and East 104th Street, for the two-year period prior to and including the date of the subject accident (NYSCEF Doc. No. 77 [Williams Aff. at ¶3]); and (4) the records produced by Williams's search (NYSCEF Doc No. 73).

Plaintiff and defendants the Archdiocese of New York and St. Lucy's Church (collectively, the "Archdiocese") oppose the City's motion¹, contending that summary judgment is premature. The Archdiocese notes that the records produced by Williams's search reveal that the City issued permits to third-party defendant Consolidated Edison of New York, Inc. ("ConEd") for work performed in the vicinity of plaintiff's trip and fall and that a DOT inspection was conducted in this vicinity seventeen days before plaintiff's accident. The Archdiocese argues that these

¹ Plaintiff incorporates the Archdiocese's arguments as its own (NYSCEF Doc. No. 97).

documents raise a question of fact as to whether the City caused or created the subject sidewalk defect.

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. 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, 324 [1986] [internal citations omitted]).

The City has carried its burden by establishing that it is exempt from liability under Administrative Code §7-210. This statute shifts tort liability for injuries caused by a defective sidewalk from the City to the owner of the property abutting that sidewalk, except where the abutting property in question is a one-, two-, or three-family residential property that is both owner occupied and used exclusively for residential purposes (See Santos v City of New York, 59 Misc 3d 1211[A] [Sup Ct, Bronx County 2018]; Vucetovic v Epsom Downs, Inc., 10 NY3d 517, 520 [2008]). Here, the City’s submission of the Atik affirmation and Schloss affidavit establishes that the City did not own the Property where plaintiff’s accident occurred and that the Property was not a one-, two-, or three-family residential property (NYSCEF Doc. Nos. 75 [Schloss Aff. at ¶3] and 76 [Atik Aff. at ¶¶4-6]).

The City has also established, through the Williams affidavit and records attached thereto, that it did not cause or create the defective condition through an affirmative act of negligence (See

Mejia v Sobro Dev. Corp., 2017 NY Slip Op 30440[U], *3 [Sup Ct, NY County 2017]; see also Rizzo v City of New York, 178 AD3d 503, 503-04 [1st Dept 2019]). While the Archdiocese argues that the permits the City issued to ConEd—dated June 26, 2015, August 18, 2015, September 1, 2015, September 4, 2015, October 13, 2015 and May 23, 2017—and the records documenting the DOT’s May 23, 2017 inspection raise issues of fact as to whether the City caused or created the defect at issue, this argument is unavailing.

As a threshold matter, the issuance of a permit, by itself, does not raise an issue of fact as to whether such work was actually performed (Vega v City of New York, 193 AD3d 560, 560-561 [1st Dept 2021]). In any event, the Archdiocese’s argument that the permits the City issued to ConEd create a question of fact as to whether ConEd performed work under the supervision of the City that caused or created a defective condition is entirely speculative and not grounds for the denial of summary judgment pursuant to CPLR §3212(f) (See e.g., Adams v City of New York 2019 WL 4806242 [Sup Ct, New York County 2019]; Beltran v City of New York 2015 WL 9794596 [Sup Ct, Queens County 2015]). Even ignoring the foregoing, the 2015 permits issued to ConEd are too distant, temporally, from the date of plaintiff’s accident to establish that the City’s affirmative negligence “immediately result[ed] in the existence of a dangerous condition” (See Saretsky v City of New York, 2010 NY Slip Op 33450[U], *4 [Sup Ct, NY County 2010]; Santos v City of New York, 59 Misc 3d 1211[A] [Sup Ct, Bronx County 2018]). Neither does the May 23, 2017 inspection create a question of fact, as it pertained to work performed in the roadway (See NYSCEF Doc. No. 73) and, therefore, has no relation to whether the City created the defective sidewalk condition.

Accordingly, it is

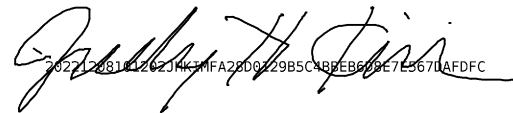
ORDERED that the City of New York’s motion for summary judgment is granted and the complaint and all cross-claims are dismissed as against it; and it is further

ORDERED that within thirty days from entry of this decision and order, counsel for the City of New York shall serve a copy of this decision and order, with notice of entry, on plaintiff as well as 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 “Efiling” page on this court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that since the City of New York is no longer a party to this action, the Trial Support Office shall reassign this action to the inventory of a non-City Part.

This constitutes the decision and order of the Court.



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12/8/2022

DATE

HON. JUDY H. KIM, 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: