Samodurova v Consolidated Edison Co. of N.Y., Inc.
2022 NY Slip Op 34336(U)
December 16, 2022
Supreme Court, Kings County
Docket Number: Index No. 518407/2018
Judge: Peter P. Sweeney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
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LYUDMILA SAMODUROVA,

Plaintiff,

-against-

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., FRATELLI REALTY HOLDING CO., INC., CTOWN D/B/A CTOWN SUPERMARKETS, AND QUICK CHECK FOOD, INC.,
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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Third Party Plaintiff,

-against-

DONOFRIO GENERAL CONTRACTORS CORP and SICON CONTRACTORS INC.,

Third Party Defendants.
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Index No.: 518407/2018
Motion Date: 9-19-22
Mot. Seq. No.: 9

DECISION/ORDER

Upon the following e-filed documents, listed by NYSCEF as item numbers 123-134, 136, 138-141the motion is decided as follows:

In this action to recover damages for personal injuries, defendants, FRATELLI REALTY HOLDING CO., and QUICK CHECK FOOD, INC., move for an Order, pursuant to CPLR § 3212, granting them summary judgment dismissing plaintiff's complaint and all crossclaims against them.

The plaintiff, LYUDMILA SAMODUROVA, commenced this action claiming that she suffered bodily injuries on August 12, 2018, when she tripped and fell on a raised metal plate that was covering a portion of the public sidewalk of 18th Street between 67th and 68th Avenue, Brooklyn, New York. The metal plate was gray in color and had the name Consolidated Edison written on it. Defendant Quick Check Food, Inc. operated a grocery store at 6614 18th

Avenue, Brooklyn, New York, which abutted the sidewalk in the area where the plate was located, and Fratelli Realty Holding Company was the owner of the building.

In support of the motion, the moving defendants submitted, among other things, the deposition transcript of Thrasos Petrou, who testified at a deposition on their behalf of the moving defendants. Petrou is the manager of Quick Check Foods and testified that on June 26, 2018, the store lost power. He immediately called Consolidated Edison, who arrived shortly thereafter. He maintained that Consolidated Edison determined that the problem was with a faulty power box. To restore power to the store, Consolidated Edison pulled temporary power lines from the street and ran them into the store from the sidewalk cellar door.

Petrou testified that approximately a month later, Consolidated Edison returned and opened the sidewalk in front of the store to run cables into the store and into the neighboring building. He testified that to do this, they made an approximate two foot by 10-foot opening in the sidewalk in front of the store and worked on it for a few days. Afterwards, Consolidated Edison placed the metal plate over the sidewalk opening. The metal plate remained in that location until the middle of September when Consolidated Edison got around to repairing the sidewalk.

In opposition to the motion, the plaintiff claims that under § 7–210 of the New York City Administrative Code, the moving defendants had an obligation to maintain the sidewalk in the area of the accident in a reasonable safe condition and that triable issue of fact exist as to whether the moving defendants breached this duty. The Court disagrees. The Rules of the City of New York Department of Transportation [34 RCNY] § 2–07(b)(1) provides that "[t]he owners of covers or gratings on a street are responsible for monitoring the condition of the covers and gratings and the area extending twelve inches outward from the perimeter of the hardware" (*see Cruz v. New York City Tr. Auth.*, 19 A.D.3d 130, 130–31, 795 N.Y.S.2d 589 [2005]). 34 RCNY 2–07(b)(2) requires that "[t]he owners of covers or gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover or grating." In *Storper v. Kobe Club*, 76 A.D.3d 426, 427, 906 N.Y.S.2d 543, 544–45, the Court concluded that in light of these provisions, the owner of a metal plate is solely responsible for its maintenance and the

abutting property owner cannot be found concurrently liable under § 7–210 of the New York City Administrative Code. In so holding, the *Stroper* Court stated:

> There is nothing in Administrative Code § 7–210 to show that the City Council intended to supplant the provisions of 34 RCNY 2–07 and to allow a plaintiff to shift the statutory obligation of the MTA to the abutting property owner. "In reaching this result, we are guided by the principle that 'legislative enactments in derogation of common law, and especially those creating liability where none previously existed,' must be strictly construed" (*Vucetovic v. Epsom Downs, Inc.*, 10 N.Y.3d 517, 521, 860 N.Y.S.2d 429, 890 N.E.2d 191 [2008] quoting *Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris USA Inc.*, 3 N.Y.3d 200, 206, 785 N.Y.S.2d 399, 818 N.E.2d 1140 [2004]).

(Storper, 76 A.D.3d at 427, 906 N.Y.S.2d at 545; *see also, Flynn v. City of New York*, 84 A.D.3d 1018, 1019, 923 N.Y.S.2d 635, 636; *Torres v. Sander's Furniture, Inc.*, 134 A.D.3d 803, 804, 20 N.Y.S.3d 630, 631).

In the absence of evidence that an abutting landowner made special use of a public sidewalk or created or caused an allegedly defective condition, the property owner is not liable for injuries sustained by an individual who falls on the sidewalk (*see, Hand v. Stanper Food Corp.*, 250 A.D.2d 812, 672 N.Y.S.2d 789; *Hinkley v. City of New York*, 225 A.D.2d 665, 639 N.Y.S.2d 479; *Landau v. Town of Ramapo*, 207 A.D.2d 384, 615 N.Y.S.2d 705; *Mendoza v. City of New York*, 205 A.D.2d 741, 613 N.Y.S.2d 695). In the instant case, the moving defendants demonstrated that they had not done anything to create or cause the alleged defective condition of the sidewalk. Plaintiff's contention that the moving defendants made special use of the metal plate is without merit as the proof demonstrates that it was not installed or maintained exclusively for the accommodation of the moving defendants (see *Landau v. Town of Ramapo*, 207 A.D.2d 384, 385, 615 N.Y.S.2d 705, 706; *Roselli v. City of New York*, 201 A.D.2d 417, 418, 607 N.Y.S.2d 672, 673).

For all of he above reasons, it is hereby

ORDRED that the motion is GRANTED, and defendants, FRATELLI REALTY HOLDING CO., and QUICK CHECK FOOD, INC. are awarded summary judgment dismissing plaintiff's complaint, insofar as asserted against them, and all crossclaims.

This constitutes the decision and order of the Court.

Dated: December 16, 2022

PPS

PETER P. SWEENEY, J.S.C.
Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020