

Lefayt v City of New York
2022 NY Slip Op 34475(U)
December 29, 2022
Supreme Court, Kings County
Docket Number: Index No. 504282/2020
Judge: Gina Abadi
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KINGS COUNTY CLERK
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At an IAS Term, City Part 7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 29th day of December 2022.

PRESENT:

HON. GINA ABADI,
J.S.C.

CARMEN T. LEFAYT,

Plaintiff,

Index No.: 504282/2020

Motion Seq: 5

-against-

DECISION/ORDER

THE CITY OF NEW YORK, et al.,

Defendants.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>NYSCEF Numbered</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed.....	92-102
Opposing Affidavits (Affirmations).....	104-105
Reply Affidavits (Affirmations).....	106
Other.....	

Upon the foregoing cited papers and after oral argument, the Decision/Order on this motion is as follows:

Defendant, the City of New York (“the City”), moves by notice of motion, sequence number 5, pursuant to CPLR § 2221(d) for an order granting reargument, denying plaintiff’s motion for partial summary judgment on liability, and/or upon reargument, clarifying the Court’s order dated July 6, 2022, and for such other and further relief as the Court may deem just and proper. Plaintiff opposes this application.

Plaintiff allegedly sustained personal injuries on August 27, 2019, when she tripped and fell on a raised uneven sidewalk in front of 1426 Bay Ridge Avenue, Brooklyn, New York. Plaintiff initially moved, motion sequence 2, for an order pursuant to CPLR § 3212 granting plaintiff partial summary judgment on the issue of liability as against the City. The City opposed the motion. In support of her motion, plaintiff submitted a Big Apple Map of the subject location depicting an annotation of “extended section of raised or uneven sidewalk” and “raised or uneven portion of sidewalk” to serve as prior written notice of the defective condition. The City did not contest the admissibility of the map nor that the map established prior written notice.¹ On April 1, 2022, oral argument was held and by short form order, in relevant part, this Court denied plaintiff’s application, finding that plaintiff failed to identify where the alleged accident occurred.

Plaintiff moved, motion sequence 4, for an order pursuant to CPLR § 2221(d) granting reargument of this Court’s April 1, 2022 order and upon reargument, granting plaintiff’s motion for partial summary judgment on liability. The City opposed the motion.² On July 6, 2022, oral argument was held and although plaintiff failed to mark where the accident occurred on the photographs, upon further review of plaintiff’s GML § 50-h transcript, affidavit, and photographs identifying the defective condition which allegedly caused her to trip and fall, the Court found that plaintiff sufficiently demonstrated where the accident occurred. Plaintiff’s application for reargument was granted and summary judgment on that issue was granted in favor of plaintiff.

The City now moves, motion sequence 5, for an order pursuant to CPLR § 2221(d) granting reargument of this Court’s July 6, 2022 order, denying plaintiff’s motion for partial summary

¹ The City did not expressly contend that the evidence presented failed to establish notice of the defect. The City generally stated that prior written notice of a defect is required as a condition precedent to suit, and this Court agrees.

² The Court notes that the City’s newly advanced argument that the markings on the map are for a different condition were not considered. Further, the City’s new evidence, google maps, were not considered as they were not presented on the original motion.

judgment on liability and/or, upon reargument, clarifying the July 6, 2022 order. Plaintiff opposes the motion.

“A motion for leave to reargue is addressed to the sound discretion of the motion court.” *Onewest Bank, FSB v N&R Family Tr.*, 200 AD3d 900 (2d Dept 2021). “Such a motion must be ‘based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.’” *Id.* quoting CPLR § 2221(d)(2). “It is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.” *McGill v Goldman*, 261 AD2d 593, 594 (2d Dept 1999); *see Jaspar Holdings, LLC v Gotham Trading Partners # 1, LLC*, 186 AD3d 582, 584 (2d Dept 2020); *Woody's Lbr. Co., Inc. v Jayram Realty Corp.*, 30 AD3d 590, 593 (2d Dept 2006).

“Administrative Code of the City of New York § 7-201(c)(2) ‘limits the City’s duty of care over municipal streets and sidewalks by imposing liability only for those defects or hazardous conditions which its officials have been actually notified exist at a specified location.’” *Ghumann v City of New York*, 203 AD3d 704 (2d Dept 2022), quoting *Katz v City of New York*, 87 NY2d 241 (1995). “Accordingly, ‘prior written notice of a defect is a condition precedent which [a] plaintiff is required to plead and prove to maintain an action against the City.’” *Ghumann*, 203 AD3d 704, quoting *Katz*, 87 NY2d 241.

After oral argument and review of all papers presented to this Court with respect to the instant motion, the Court grants reargument for the limited purpose of clarifying its July 6, 2022 order. Plaintiff expressly moved for *partial* summary judgment on liability. “Whether a dangerous or defective condition exists on the property of another so as to create liability depends on the

peculiar facts and circumstances of each case and is generally a question of fact for the jury.”
Trincere v County of Suffolk, 90 NY2d 976 (1997).

Accordingly, the Court clarifies the July 6, 2022 order, holding that plaintiff’s motion for partial summary judgment on liability is granted to the extent that defendant the City of New York had prior written notice of the defective condition which allegedly caused plaintiff’s injuries. The remainder of the motion which seeks liability in favor of plaintiff remains denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



HON. GINA ABADI
J.S.C.

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