

**Martinez v Welsback Elec. Corp.**

2023 NY Slip Op 34378(U)

November 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 520859/2020

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 17th day of Nov. 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF KINGS

-----X  
FELICIANO JANCINTO MARTINEZ,  
Plaintiff(s)

Index No: 520859/2020

-against-

**ORDER**

WELSBACK ELECTRIC CORP.,  
Defendant(s)  
-----X

The following e-filed papers read herein:  
Notice of Motion/Affirmation in Support/Affidavits Annexed  
Exhibits Annexed/Reply.....  
Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

NYSCEF Nos.:  
1-39; 52-54  
42-50

In this matter, Welsback Electric Corp. (“Defendant”) moves (Motion Seq. 1) for summary judgment dismissing Feliciano Jancinto Martinez’s (“Plaintiff”) complaint. Plaintiff opposes the motion on the grounds that Defendant’s motion is premature, and issues of material fact are present warranting a trial.

Plaintiff commenced this action seeking to recover monetary damages for personal injuries allegedly sustained on November 20, 2017, as a result of an incident at the intersection of Morgan Ave. and Beadel St. in Brooklyn, New York. At the time of the incident, Plaintiff was riding a bicycle when he hit a pothole in the roadway causing him to be thrown from the bicycle sustaining injuries. Defendant is a municipal electrical contractor who had a contract with the New York City Department of Transportation for maintenance of streetlights in Kings County from July 1, 2016, through July 30, 2019. In his complaint, Plaintiff alleges that Defendant’s negligent maintenance of the streetlight at the intersection caused Plaintiff’s accident.

In support of its motion, Defendant argues that as a streetlight contractor, it did not owe a duty to Plaintiff or the general public as a matter of law because New York case law provides that there is no duty to provide street lighting unless lighting is necessary to avoid a dangerous or potentially hazardous condition.<sup>1</sup> Defendant also contends that a single streetlight outage on a busy roadway does not make the roadway unreasonably dangerous. Additionally, Defendant claims that even if it did owe a duty to the

<sup>1</sup> Thompson v City of New York, 78 NY2d 682 [1991];

general public and/or Plaintiff, Plaintiff has failed to establish that it had prior notice of any dangerous condition. In support of its motion, Defendant submits an affidavit of Alena Paziena (“Paziena”), a project manager of Welsback Electric Corp. In her affidavit, Paziena states that pursuant to its contract with the City, Defendant’s limited duties included (1) responding to notifications of streetlights in need of servicing within 10 days of receiving notice from the City and (2) performing drive-by visual inspections once every 10 days and creating notifications for any streetlights that were observed to need servicing. Paziena maintains that Defendant complied with its contractual obligations and that its records show that in the eleven months prior to and on the date of Plaintiff’s accident, Defendant had not received any notifications concerning any streetlight conditions at the subject intersection. Furthermore, Paziena asserts that Defendant’s records establish that it had not received any notification regarding the streetlight within 30 days following the incident. Defendant claims that Plaintiff’s 50-h testimony did not mention any issues with the streetlighting or allege that streetlighting caused his injuries.

In opposition, Plaintiff argues that Defendant’s motion should be denied as premature because there is still outstanding discovery including depositions of the parties. Plaintiff believes that cross-examination will lead to relevant evidence since the facts essential to justify opposition are exclusively within the knowledge and control of Defendant. Plaintiff also claims that there are credibility issues with Paziena’s affidavit because the full extent of her experience and duties within the corporation are not disclosed and that Plaintiff wants to cross-examine her regarding their contract with the City and the streetlight history report. Plaintiff also argues that Defendant has failed to establish that it did not have notice of a dangerous condition because a search result submitted by the City shows that the streetlight was repaired four times within two years of the Plaintiff’s accident including on December 9, 2016, and March 16, 2017. Plaintiff states that questions of fact are present because Defendant did not submit any inspector reports or drive-by inspection records to address whether the defective street light condition was caused by or related to a prior repair to the subject streetlight. Plaintiff states that Martinez was not asked about lighting conditions at his 50-h hearing but he states in his affidavits that at the time of the accident that it was dark outside, and the streetlight was not working.

In reply, Defendant argues that no amount of discovery will change the fact that it does not owe a duty to Plaintiff as a matter of law. Defendant states that Paziena’s affidavit is credible since she is responsible for the bookkeeping and record keeping for the corporation. Defendant addresses Plaintiff’s claims that the search result submitted by the City stating that maintenance was performed on the streetlight on the date of the accident actually refers to a different streetlight on the north corner of Beadel Street, three streetlights east of its intersection with Morgan Ave, and was not the subject streetlight in this action.

It is well established that “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” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v Nassau County*, 111 AD2d 212, [2d Dept 1985]; *Steven v Parker*, 99 AD2d 649, [2d Dept 1984]; *Galeta v New York News, Inc.*, 95 AD2d 325, [1st Dept 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v Dino & Artie’s Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]; *Rebecchi v Whitmore*, 172 AD2d 600 [2d Dept 1991]). To be entitled to summary judgment on the issue of liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Higashi v M & R Scarsdale Restaurant, LLC*, 176 AD3d 788 [2d Dept 2019]; *Webb v Scharf*, 191 AD3d 1353 [4th Dept 2021]). When a defendant's liability is established as a matter of law before trial, the jury must still determine whether the plaintiff was negligent and whether such negligence was a substantial factor in causing plaintiff's injuries -- if so, the comparative fault of each party is then apportioned by the jury (*Rodriguez* at 324).

A municipality has a duty to maintain its streets in a reasonably safe condition (*Thompson v City of New York*, 78 N.Y.2d 682 [1991]; *Silvestri v Village of Bronxville*, 106 AD3d 904 [2d Dept. 2013]; *Gregware v City of New York*, 132 AD3d 51 [1st Dept. 2015]). While authorized to install street lighting pursuant to General City Law 20(7), a municipality generally is required to do so only in certain situations where it is necessary to keep the street safe, i.e., where there is a defect or some unusual condition rendering the street unsafe to the traveling public (*Thompson* at 684; *Griffin v Town of Harrison*, 268 NY 238 [1935]). The duty to maintain existing streetlights is similarly limited to those situations in which illumination is necessary to avoid dangerous and potentially hazardous conditions (*Id.*). Neither the darkness of a roadway nor the fact that a light was broken establishes a defect or unusual, unsafe condition (*Thompson* at 685; *Rios v City of NY*, 33 ad3D 780 [2D Dept. 2006]; *Cracas v Zisko*, 204 AD2d 382 [2d Dept. 1994]; *Gagnon v City of Saratoga Springs*, 51 AD3d 1096 [3d Dept. 2008]). Similarly, roadway hazards such as defective storm drains, accumulations of debris, and potholes are not the type of hazardous condition requiring street illumination (*DiLeo v. Town/Vil. of Harrison*, 55 AD3d 867 [2d Dept. 2008]; *Abbott v County of Nassau*, 223 AD2d 662 [2d Dept. 1996]).

In order to establish a prima facie case of negligence based on insufficient lighting, a plaintiff must demonstrate that the defendant had a duty to light the area where they were injured (*Gagnon* at 1098). Where the allegation is that the light was not functioning properly, the plaintiff must further show that the malfunction of the light created a dangerous condition (*Thompson* at 685). However, an independent contractor responsible for municipal light repairs owes no duty of care to the general public (*Vergara v Tides Constr. Corp.*, 280 AD2d 665 [2d Dept. 2001]; *Belmer v HHM Associates, Inc.*, 101 AD3d 526 [1st Dept. 2012]). No duty can be found where the defendant “lacked sufficient control ... to be in a position to prevent the alleged negligence” (*Vogel v W. Mtn. Corp.*, 97 AD2d 46 [3d Dept 1983]).

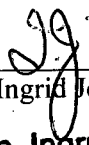
Here, the court finds that Defendant has established its prima facie burden entitling it to summary judgment as a matter of law. Defendant, as an independent contractor responsible for municipal light repairs, owes no duty of care to the general public in the performance of its municipal contract. The Defendant’s duties, which were limited to maintenance and supervision of street light fixtures that illuminate a public roadway in which it does not control, does not absorb the City’s broad duty to maintain the roadway, sidewalk, and crosswalks in a reasonably safe condition (*Camara v Appiah*, 187 AD3d 460 [1st Dept. 2020]; see generally *Espinal v. Melville Snow Contrs.*, 98 NY2d 136 [2002] see also *Thompson* at 685; *Gagnon* at 1098).

Accordingly, it is hereby,

ORDERED, that Defendant’s motion for summary judgment dismissing the Plaintiff’s complaint is granted.

Matters not discussed are either moot or without merit.

This constitutes the decision and order of the court.

  
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Hon. Ingrid Joseph J.S.C.

Hon. Ingrid Joseph  
Supreme Court Justice