

**Septimus v Yeshiva Univ.**

2023 NY Slip Op 34392(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 155153/2019

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 52

*Justice*

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PAUL SEPTIMUS,

Plaintiff,

- v -

YESHIVA UNIVERSITY, YESHIVA UNIVERSITY  
DEVELOPMENT FOUNDATION, INC., 142 LAUREL HILL  
REALTY LLC, THE CITY OF NEW YORK,

Defendant.

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INDEX NO. 155153/2019  
MOTION DATE 09/22/2022  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

This is an action by the plaintiff, Paul Septimus, to recover for personal injuries allegedly sustained on December 15, 2018, while on the pathway, roadway, loading dock area, and/or ramp located in front of, or part of, 40 Laurel Hill Terrace, New York, New York, when he tripped and fell on an uneven portion of sidewalk and/or dumpster/dumpster track.

Defendant The City of New York ("City") now moves for an order, pursuant to CPLR 3212, granting summary judgment and dismissing the complaint and all cross-claims as against the City. This motion is unopposed and for the reasons set forth below, the motion is granted.

CPLR § 3212:

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 (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to make such a *prima facie* showing requires a denial of the motion, regardless of the

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sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once a showing 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, 562 [1980]).

The City has established that it did not owe the plaintiff a duty of care.

Plaintiff has asserted claims of negligence based on a dangerous and/or hazardous condition on the premises, allegedly arising out of the defendants' alleged ownership, operation, control, management, maintenance, utilization, inspection, repair, or special use. However, the City contends that as it does not own, operate, manage, control, maintain, or repair the subject premises and/or the dumpster and dumpster track which allegedly caused the accident, it did not owe the plaintiff a duty of care. The City asserts that as there was no duty of care, it therefore may not be held liable.

“Because a finding of negligence must be based on the breach of a duty, a threshold question in tort cases is whether the alleged tortfeasor owed a duty of care to the injured party” (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 138 [2002]). The existence and scope of a duty is a question of law (*Id.*). Liability for a dangerous or defective condition on property is predicated upon ownership, occupancy, control or special use of the property (*Ruffino v New York City Tr. Auth.*, 55 AD3d 817, 818 [2d Dept 2008]). Where none are present, generally a party cannot be held liable for injuries caused by the allegedly defective condition (*Id.*).

Through the affidavit of David Schloss, Senior Title Examiner with the New York City Law Department, the City has sufficiently established that it has no title fee interest and does not own the property located at 40 Laurel Hill Terrace (NYSCEF Doc. No. 51). Additionally, the

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City has provided sufficient evidence in the form of deposition testimony, affidavits, and the Service Agreement between the City and Yeshiva University, to establish that Yeshiva University was responsible for purchasing the dumpster, the installation of the tracks, and the maintenance, operation, and management of both (*see* NYSCEF Doc. Nos. 43-50). Therefore, the City has established its prima facie entitlement to judgment as a matter of law insofar as it has demonstrated that it did not owe the plaintiff a duty of care. As there was no opposition, the motion is granted.

Accordingly, it is hereby

ORDERED that defendant The City of New York's motion for summary judgment is granted and the complaint is dismissed against them; as The City of New York is no longer a party to the action, this matter should be removed from the City Part and re-assigned to a General IAS Part; and it is further

ORDERED that this matter is remitted to the General Clerk's Office for reassignment to another Justice; and it is further

ORDERED that the cross-claims against said defendant by defendants Yeshiva University and Yeshiva University Development Foundation, Inc. are dismissed; and it is further

ORDERED that the said claims and cross-claims against defendant The City of New York are severed and the balance of the action shall continue against the remaining defendants; and it is further

ORDERED that the caption 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 the Clerk of the Court shall enter judgment in favor of defendant The City of New York dismissing the claims and cross-claims made against them in this action, together

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with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, 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).

This constitutes the decision and order of the court.

12/14/2023  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

**INCLUDES TRANSFER - REASSIGN**