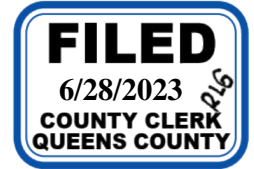


<b>Ramharakh v Nembhard</b>
2023 NY Slip Op 35056(U)
June 27, 2023
Supreme Court, Queens County
Docket Number: Index No. 713197/2017
Judge: Tracy Catapano-Fox
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS



-----X  
GURDATT RAMHARAKH,

Index No. 713197/2017

Plaintiff,

Part 6

-against-

Motion Date: June 12, 2023

CAROL NEMBHARD, and THE CITY OF NEW  
YORK,

Calendar No. 25

Sequence No. 3

Defendants.

-----X

The following papers numbered 1 through 10 read on this motion by defendant THE CITY OF NEW YORK for summary judgment and dismissal of plaintiff’s Complaint and any cross-claims pursuant to CPLR §3212.

Papers  
Numbered

Notice of Motion, Affirmation, Exhibits.....	1-4
Affirmation in Opposition, Exhibits.....	5-7
Reply Affirmation, Exhibits.....	8-10

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendant The City of New York’s motion for summary judgment dismissing plaintiff’s Complaint and any cross-claims pursuant to CPLR §3212 is granted, pursuant to Administrative Code §7-210. (*See Nicoletti v. City of New York* 77 A.D.3d 715 [2d Dept. 2010].)

Plaintiff commenced this action for personal injuries sustained on July 4, 2016 as a result of tripping and falling on broken sidewalk located between 103-09 and 103-19 168<sup>th</sup> Place, Queens, New York. Plaintiff filed the Summons and Complaint on September 22, 2017, and issue was joined on February 16, 2018.

Defendant City argues that summary judgment is warranted, because it is not liable for maintenance or repair of the sidewalk abutting the vacant lot. Defendant presents the pleadings,

deposition testimony, and affidavits of Thomas Russell and David Atik in support of its motion. Plaintiff testified that he parked his car on 168<sup>th</sup> Place and was walking up a small hill when he stepped on a rock or concrete block and fell. He further testified that he thought he was on the sidewalk but was not, and identified the location in photographs. Defendant argues that the geographic coordinates of the location provided in plaintiff's Notice of Claim indicates that plaintiff fell due to a large rock abutting the sidewalk located at 103-17 168<sup>th</sup> Place. Defendant further argues that under Administrative Code §7-210 it is not liable for maintaining and repairing the area where plaintiff fell, as it does not own the property abutting the sidewalk, and the property is a vacant lot that is not owner occupied. Defendant presented affidavits from Thomas Russell and David Atik, who performed property searches and determined that the property lot was owned by Kareem J. Rodgers, and was not a one-to-three family residential property. Defendant presented the deposition testimony of NYC DOT records searcher Alison Boles, who performed a record search for the subject property, and found no work permits, applications, inspections or complaints. As the property is not exempt from liability under Administrative Code §7-210, defendant City argues it is not liable for maintaining the property, nor did it perform any work on the sidewalk where plaintiff fell.

Plaintiff opposes defendant City's motion, arguing defendant failed to present a prima facie case of entitlement to summary judgment. He argues that according to co-defendant Carol Nembhard's deposition testimony, defendant City performed inspections and maintained work projects in or around the area where plaintiff fell, and therefore was on notice of the defective condition.

Pursuant to CPLR 3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also "show that there is no defense to the cause of action." (*Id.*). The party moving for summary judgment must make a *prima facie* showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012].) Once a *prima facie* showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

In 2003, Administrative Code §7-210 was enacted to shift tort liability for defective sidewalks from the City of New York to abutting property owners but created an exception for one-to-three family residential properties that are owner occupied. (*Brown v. City of New York*, 162 A.D.3d 733, 734 [2d Dept. 2018].) The exception was created to relieve small property owners with limited resources from the sole burden of liability for sidewalk repairs and defects. (*Id. at* 734-735.) However, it also allowed for liability against residential property owners who negligently perform repairs, created the defective condition, or caused the condition to occur because of a special use of the sidewalk. (*Leitch-Henry v. Doe Fund, Inc.*, 179 A.D.3d 655 [2d Dept. 2020].)

Administrative Code § 7-210 places the duty to maintain and liability for failure to maintain the sidewalk on the abutting property owner. AC §19-101(d) defines a sidewalk as “that portion of the street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians.” Generally, liability for injuries sustained as a result of negligent maintenance of, or the existence of a defective condition to a public sidewalk is placed on the municipality and not the abutting landowner. (*Donaghy v. Liddy*, 195 A.D.3d 680 [2d Dept. 2021].) However, an abutting landowner can be liable for injuries caused by a sidewalk defect when the owner either created or caused the defective condition or because of a special use of the area. (*Id.*; *see also Petrillo v. Town of Hempstead*, 85 A.D.3d 996, 997 [2d Dept. 2011].)


Defendant City of New York established a prima facie entitlement to summary judgment through the evidence presented. (*See Stubenhaus v. City of New York*, 170 A.D.3d 1064 [2d Dept. 2019].) Defendant demonstrated that based upon tax records and a title search, the property abutting the sidewalk where plaintiff fell was owned by Kareem J. Rodgers, not defendant City. Further, defendant demonstrated that based upon the NYC DOT records, defendant did not perform any work on the sidewalk or authorize work permits for the area where plaintiff fell, nor did it engage in a special use of the property. Further, defendant City established the sidewalk abutted a vacant lot, and not a 1-3 family home, and therefore it is exempt from liability pursuant to Administrative Code §7-210.

Plaintiff failed to raise a triable issue of fact in dispute. (*See Zorin v. City of New York*, 137 A.D.3d 1116 [2d Dept. 2016].) His argument that defendant City had actual or constructive knowledge of the defective condition is without merit, as he presented conclusory and speculative claims that defendant City performed inspections and work at the location. (*See Missirlakis v.*

*McCarthy*, 145 A.D.3d 772 [2d Dept. 2016].) As plaintiff failed to present competent, admissible evidence in support of his claims, there are no issues of fact in dispute.

Accordingly, defendant The City of New York's motion for summary judgment dismissing plaintiff's Complaint pursuant to CPLR §3212 is granted, and plaintiff's Complaint and all cross-claims against defendant The City of New York are dismissed.

Dated: June 27, 2023

  
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Hon. Tracy Catapano-Fox, J.S.C.

