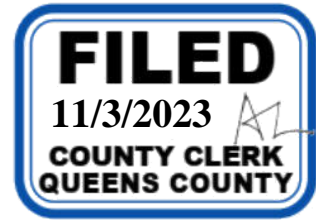


Padilla v City of New York
2023 NY Slip Op 35090(U)
November 2, 2023
Supreme Court, Queens County
Docket Number: Index No. 704435/2018
Judge: Cheree A. Buggs
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This opinion is uncorrected and not selected for official publication.



Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

-----X
DEISY PADILLA,

Index No.: 704435/2018

Plaintiff,

Motion

Date: October 30, 2023

-against-

Motion Cal. No.: 15

THE CITY OF NEW YORK, QUEENS BOROUGH
PUBLIC LIBRARY, QUEENS LIBRARY, AND
QUEENS PUBLIC LIBRARY,

Motion Sequence No.: 2

Defendants.

-----X

The following e-file papers numbered 39-54 submitted and considered on this motion by Defendants Queens Borough Public Library, Queens Library and Queens Public Library seeking an Order pursuant to Civil Practice Law and Rules (CPLR) 3212 granting these defendants summary judgment and dismissing the verified complaint of Plaintiff Deisy Padilla and any and all cross claims against them.

Papers
Numbered

Notice of Motion-Affidavits..... EF 39-54

Plaintiff Deisy Padilla commenced this action on March 23, 2018 to recover monetary damages for personal injuries she alleged that she sustained on September 2, 2017 while walking on the sidewalk which abutted 118-14 Hillside Avenue, County of Queens, State of New York, where the Richmond Hill Library is located. Plaintiff sued The City of New York, Queens Borough Public Library, Queens Library and Queens Public Library, asserting that the defendants owned the premises and/or failed to maintain or repair the defective condition of the sidewalk. The defendants appeared in this action with the filing of verified answers, denying the essential allegations contained in Plaintiff's complaint.

Now, Defendants Queens Borough Public Library, Queens Library and Queens Public Library make this application under CPLR 3212 granting these defendants summary judgment and dismissing Plaintiff's verified complaint and any and all cross claims against them. Moving defendants maintain their motion should be granted because they owed no duty to the Plaintiff since they are not responsible for maintaining the sidewalk at the subject location where Plaintiff's accident occurred.

According to moving defendants, The Richmond Hill Library (hereinafter "Library") is located at 118-14 Hillside Avenue, Queens, New York. Movants further stated that the building where the Library is located was owned by the City of New York (hereinafter "City") in September 2017 and at the time of the accident, and that City was responsible to make repairs to the sidewalk abutting the Library. Thus, moving defendants were not responsible for reporting the condition of the sidewalk, nor did they maintain or make repairs to the abutting sidewalk where Plaintiff's accident occurred.

In support of the motion, movants' documentary evidence included the deposition transcripts of Plaintiff, and their witness, Linda Green dated November 20, 2020. Plaintiff testified that she tripped and fell on the sidewalk at the subject location on September 2, 2017 due to the sidewalk being unlevel. Ms. Green, movants' Vice President of Facilities and Environmental Services, testified that defects and tripping hazards on the sidewalk of the building where the incident occurred were the responsibility of the City. Movants also submitted the deposition transcript of the witness for the City, Laris Dubina, a New York City Department of Transportation record searcher. Additionally, movants submitted in support of the motion a Notice to Admit which was served upon City, and City's Verified Reply to the Notice to Admit, wherein City admitted that it was the owner of the building abutting the sidewalk where Plaintiff's accident occurred.

Law and Application

New York City Administrative Code § 7-210 states the following:

§ 7-210. Liability of real property owner for failure to maintain sidewalk in a reasonably safe condition.

- a. It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition.
- b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition.

Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This subdivision shall not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

c. Notwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.

d. Nothing in this section shall in any way affect the provisions of this chapter or of any other law or rule governing the manner in which an action or proceeding against the city is commenced, including any provisions requiring prior notice to the city of defective conditions.

New York City Administrative Code § 19-152 states the following in relevant part:

§ 19-152. Duties and obligations of property owner with respect to sidewalks and lots.

a. The owner of any real property, at his or her own cost and expense, shall (1) install, construct, repave, reconstruct and repair the sidewalk flags in front of or abutting such property, including but not limited to the intersection quadrant for corner property, and (2) fence any vacant lot or lots, fill any sunken lot or lots and/or cut down any raised lots comprising part or all of such property whenever the commissioner of the department shall so order or direct. The commissioner shall so order or direct the owner to reinstall, construct, reconstruct, repave or repair a defective sidewalk flag in front of or abutting such property, including but not limited to the intersection quadrant for corner property or fence any vacant lot or lots, fill any sunken lot or lots and/or cut down any raised lots comprising part or all of such property after an inspection of such real property by a departmental inspector. The commissioner shall not direct

the owner to reinstall, reconstruct, repave or repair a sidewalk flag which was damaged by the city, its agents or any contractor employed by the city during the course of a city capital construction project. The commissioner shall direct the owner to install, reinstall, construct, reconstruct, repave or repair only those sidewalk flags which contain a substantial defect. For the purposes of this subdivision, a substantial defect shall include any of the following:


1. where one or more sidewalk flags is missing or where the sidewalk was never built;
2. one or more sidewalk flag(s) are cracked to such an extent that one or more pieces of the flag(s) may be loosened or readily removed;
3. an undermined sidewalk flag below which there is a visible void or a loose sidewalk flag tht rocks or seesaws;
4. a trip hazard, where the vertical grade differential between adjacent sidewalk flags is greater than or equal to one half inch or where a sidewalk flag contains one or more surface defects of one inch or greater in all horizontal directions and is one half inch or more in depth... .

The Court finds that moving defendants established their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 (1986); *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Neither Plaintiff or co-defendant The City of New York have submitted responsive papers to this motion for summary judgment to raise a triable issue of fact.

Therefore, the motion of Defendants Queens Borough Public Library, Queens Library and Queens Public Library seeking an Order pursuant to CPLR 3212 granting these defendants summary judgment and dismissing the verified complaint of Plaintiff Deisy Padilla and any and all cross claims against them is granted without opposition.

The foregoing constitutes the decision and Order of the Court.

Dated: November 2, 2023



 Hon. Chereé A. Buggs, JSC

