

Katz v CS Wall St. LLC

2024 NY Slip Op 30086(U)

January 8, 2024

Supreme Court, New York County

Docket Number: Index No. 154749/2019

Judge: Shlomo S. Hagler

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

PRESENT: HON. SHLOMO S. HAGLER PART 17

Justice

-----X INDEX NO. 154749/2019

DEBORAH KATZ,

Plaintiff,

MOTION DATE 05/09/2022,
06/28/2022

- v -

MOTION SEQ. NO. 002 003

CS WALL STREET LLC, 15 BROAD STREET,
LLC, FIRSTSERVICE RESIDENTIAL NEW YORK, INC.

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86

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

In this personal injury action, plaintiff, Deborah Katz, alleges that she sustained injuries after she tripped and fell due to missing brick pavers in front of 23 Wall Street in New York City. Plaintiff maintains that the area where plaintiff tripped and fell is a "sidewalk" for the purposes of Section 7-210 of the Administrative Code of the City of New York ("Section 7-210") (Motion Seq. No. 002). Defendants, CS Wall Street LLC, 15 Broad Street, LLC and FirstService Residential New York, Inc. (collectively, "defendants") move for summary judgment, pursuant to CPLR 3212, on the grounds that the location where plaintiff fell is neither within the property lines that constitute 23 Wall Street, nor did the accident occur on the sidewalk abutting defendants' property pursuant to Section 7-210 (Motion Seq. No. 003).

BACKGROUND

On September 3, 2018, plaintiff tripped and fell in front of 23 Wall Street, in New York County (“the accident location”). Wall Street at its intersection with Broad Street, near the New York Stock Exchange, has been closed to general vehicular traffic since 9/11.

Plaintiff testified that when she was walking on the paved sidewalk in front of 23 Wall Street, she stepped onto the cobblestone street/roadway, and tripped and fell due to four missing brick pavers. The pavers measured approximately 6 inches by 6 inches in length and width, and one to three inches in depth (plaintiff’s deposition, NYSCEF Doc No. 31 at 63-64).

Defendant CS Wall Street, LLC is the owner of the commercial space that is part of the Downtown Condominium located at 23 Wall Street (defendants’ statement of material facts, NYSCEF Doc No. 63 ¶ 2). Defendant, 15 Broad Street, LLC, is the sponsor entity that converted the ownership of the private property into condominium units, known as the Downtown Condominium (*id.* ¶ 1). Defendant FirstService Residential New York, Inc. (FirstService Residential) is the management company for 15 Broad Street (Foxworth deposition, NYSCEF Doc No. 71 at 9).

Angel Carregal (Carregal), the resident manager of Downtown Condominium, testified on behalf of defendant 15 Broad Street, LLC (“15 Broad Street”). Carregal explained that 15 Broad Street was the sponsor corporation that converted the property into a condominium, known as Downtown Condominium, in 2006 (Carregal deposition, NYSCEF Doc No. 69 at 9-11). Carregal testified that 15 Broad Street and CS Wall Street, LLC (“CS Wall St”) are responsible for the maintenance of the sidewalk in front of the building, up to the curb (*id.* at 25-26, 51). Carregal further testified that vehicles are permitted to drive on Wall Street after they proceed through a checkpoint (*id.* at 28-29, 31-32) and that he sees pedestrians walk on the brick

pavement daily, including Wall Street (*id.* at 34). Carregal does not know what entity controls the checkpoint (*id.* at 34). It was Carregal's understanding that the location where plaintiff fell is owned by The City of New York, because the City cleans and performs snow removal of the brick pavement at that location (*id.* at 53-54).

Sal Ariganello (Ariganello) testified on behalf of defendant CS Wall Street. Ariganello testified that he was the managing director for Cushman & Wakefield, a property management firm that was responsible for CS Wall Street, located at 23 Wall Street (Ariganello deposition, NYSCEF Doc No. 70 at 9). Ariganello stated that vehicles with special permission are allowed access to drive on the street in front of 23 Wall Street but that pedestrians also walk along the same street (*id.* at 29-30).

Bethany Foxworth (Foxworth) testified on behalf of FirstService Residential. Foxworth testified that FirstService is a property management company for residential properties and that it managed the residential portion of the Downtown Condominium, during the applicable period (NYSCEF Doc No. 71 at 9-10). Foxworth testified that there are two separate security checkpoints that a vehicle may pass through before driving on the cobblestone where plaintiff's accident occurred (*id.* at 19-21). One checkpoint is located on Broad Street and the other on Wall Street (*id.* at 20). The security checkpoint is policed by persons in uniform, but she is unsure by which entity or agency (*id.* at 11-13). Foxworth also testified that pedestrians walk on the cobblestone daily (*id.* at 22-23).

The defendants retained Saeid Jalilvand, L.S., C.S. (Jalilvand) of Montrose Surveying Co., LLC to perform a visual inspection and survey of the premises located at Tax Lot 7501, Tax Block 26, also known as 23 Wall Street, New York, New York (Jalilvand aff, NYSCEF Doc No 72, p. 11 ¶ 2). Jalilvand opined that the accident location was outside the boundary of 23 Wall

Street and was outside of the sidewalk abutting the property. Jalilvand stated that the accident location was “4 feet 5 inches northwest from the perpendicular prolongation of the vertical property line; and 10 feet 8 inches north from the perpendicular prolongation of the horizontal property line’ ... and therefore, not within the statutory obligation(s) imposed by New York City Owners and Tenants to maintain, control and/or repair” (*id.* ¶¶ 7-9).

DISCUSSION

“[T]he 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] [citation omitted]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad*, 64 NY2d at 853; *see also Lesocovich v 180 Madison Ave. Corp.*, 81 NY2d 982 [1993]).

The party opposing summary judgment has the burden of presenting evidentiary facts sufficient to raise triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *CitiFinancial Co. [DE] v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]). The court is required to examine the evidence in a light most favorable to the party opposing the motion (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]). Summary judgment should not be granted if there are genuine material issues of disputed fact (*Tronlone v Lac d'Amiante Du Quebec*, 297 AD2d 528, 528-529 [1st Dept 2002], *aff'd* 99 NY2d 647 [2003]).

Section 7-210 of the New York City Administrative Code provides that “[i]t 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” (New York City Administrative Code § 7-210[a]). Section 7-210 further establishes liability “for any ... personal injury ... proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition” (New York City Administrative Code § 7-210[b]). “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” (*id.*).

While plaintiff does not explicitly move this court pursuant to CPLR 3212, or any CPLR provision for that matter, plaintiff’s motion involves “issues of law fully appreciated and argued by both sides,” and “both sides make it unequivocally clear that they are laying bare their proof and deliberately charting a summary judgment course” (*Four Seasons Hotels Ltd. v Vinnik*, 127 AD2d 310, 320 [1st Dept 1987]). Moreover, since the material facts are undisputed and since resolution of plaintiff’s motion calls for applying the law to facts and both sides have briefed the motions as seeking summary judgment, notice of conversion is not required, and plaintiff’s motion is hereby considered as a motion for summary judgment.

Plaintiff cites to *Khaimova v City of New York*, 95 AD3d 1280, 1281 [2d Dept 2012]) where the Second Department held that,

“the Supreme Court properly determined that the brick walkway where the plaintiff allegedly fell, which ran parallel to a concrete section of the sidewalk, was part of the “sidewalk” for purposes of liability under Administrative Code of the City of New York § 7-210. The brick walkway lay between the curb and the adjacent property lines, and was intended for the use of pedestrians, as evidenced by the placement of parking meters thereon.”

However, in this matter, it is undisputed that the location where plaintiff fell was initially intended for vehicles and not pedestrians. Indeed, vehicles still maintain access to the roadway after passing through security.

Similarly misplaced is plaintiff's reliance on *Bronfman v East Midtown Plaza Housing Co., Inc.* (151 AD3d 639, 640 [1st Dept 2017]), where the pedestrian plaza in question was a concrete walkway that connected two cul-de-sacs. The walkway was raised and specifically intended for pedestrians, as evidenced by the deed from the City of New York to the defendants, that outlined "two sidewalk easements for the benefit of pedestrians and... describes the boundaries of each easement" (*Bronfman v East Midtown Plaza Housing Co., Inc.*, 2016 WL 7426708, at *1 (Sup Ct, NY County, Dec. 15, 2016) No. 158561/2013).

Plaintiff cites to *James v 1620 Westchester Ave., LLC* (105 AD3d 1, 4-5 [1st Dept 2013]) wherein the Court held that in the absence of a definition in Section 7-210, the definition of "sidewalk" in New York City Administrative Code § 19-101(d) should govern. Administrative Code § 19-101 defines sidewalk as "that portion of a 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."

The same argument was raised in *Lopez v United States* (2012 WL 983560, at *6 [SDNY, Mar. 23, 2012]), where the plaintiff tripped and fell in a public plaza due to loose, missing, defective, and/or broken bricks. The defendant argued that it did not own the plaza where plaintiff tripped, but rather owned the building adjacent to the plaza. The defendant submitted land records to demonstrate that its property line did not extend to the plaza and produced a witness with knowledge of the property boundaries. Plaintiff then argued that the area where she fell should be considered a sidewalk, for the purposes of Section 7-210. The Court rejected this

argument after analyzing the definition of “sidewalk” pursuant to New York City Administrative Code §§ 7-201 and 19-101. Section 7-201(c) of the Administrative Code sets forth the requirement of service of a notice of claim upon the City as a prerequisite to suits against the City. It provides, in relevant part:

“(a) The term ‘street’ shall include the curbstone, an avenue, underpass, road, alley, lane, boulevard, concourse, parkway, road or path within a park, park approach, driveway, thoroughfare, public way, public square, public place, and public parking area.

(b) The term ‘sidewalk’ shall include a boardwalk, underpass, pedestrian walk or path, step and stairway.”

Ultimately, the Court held that “the features of the Plaza, which is a wide, open space, do not readily fit the definitions contained in either of the cited provisions of the Administrative Code” and it would be “counterintuitive that Section 7-210 could apply to such a space, given that the space is variously bordered by a number of buildings, with no clear demarcations or logical boundaries to suggest where one property owner’s maintenance responsibilities would begin and another’s end” (*Lopez v United States*, 2012 WL 983560, *8).

The court in *Moore v City of New York* (2015 NY Slip Op 30213(U), at *5 [Sup Ct, Queens County 2013]) contemplated whether a public square or plaza should be excluded from the definition of sidewalk for Section 7-210 liability purposes. It held that Section 7-210 must be read in conjunction with New York City Administrative Code §§ 19-101 and 7-201(c)(1), and therefore,

“[the] plain reading of the language of the foregoing sections of the Administrative Code requires that the term ‘sidewalk’ in §7-210 be given its commonly understood meaning, and to comprise those areas of ‘a boardwalk, underpass, pedestrian walk or path, step and stairway’ ‘between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb’. In contrast, a ‘public square’ and ‘public place’ are part of the street. This is the only rational interpretation of the meaning of the term ‘sidewalk’ in §7-210, in light of a plain

reading of the foregoing sections of the Administrative Code and the intent of the Legislature as gleaned in its Report of the Committee on Transportation” (*id.* at *5).

Following the rationale of *Lopez* and *Moore*, the street where plaintiff’s accident occurred cannot be said to be a sidewalk for the purposes of 7-210 liability. Plaintiff herself testified that she stepped off the curb of a paved sidewalk, onto the brick paved roadway where her accident occurred (NYSCEF Doc No. 67 at 54-57). The photos annexed as exhibits and marked during her deposition clearly indicate that she is no longer on a sidewalk (photo of plaintiff at accident location, NYSCEF Doc No. 68). Plaintiff’s argument that the location is the “functional equivalent” of a sidewalk is met with the same inability cited by the *Lopez* Court to ascertain where “one property owner’s maintenance responsibilities would begin and another’s end” (*Lopez*, 2012 WL 983560 at *8). The location where plaintiff alleges her accident occurred is not a sidewalk, and is open to and intended for vehicles, albeit that vehicular access is limited, even though pedestrians are also allowed daily access. Accordingly, plaintiff’s motion is denied.

Turning to defendants’ summary judgment motion, it is well settled that “liability for a dangerous or defective condition on property is generally predicated upon ownership, occupancy, control or special use of the property. Where none is present, a party cannot be held liable for injuries caused by the dangerous or defective condition of the property” (*Minott v City of New York*, 230 AD2d 719, 720 [2d Dept 1996], quoting *Turrisi v Ponderosa, Inc.*, 179 AD2d 956, 957 [3rd Dept 1992] [additional citations omitted]).

Defendants have established their prima facie entitlement to summary judgment with evidence in the form of their expert report by Jalilvand, deposition testimonies of Carregal, Ariganello and Foxworth, and sworn affidavits of Foxworth and Ariganello, to demonstrate that

it did not own, maintain, or make a special use of the public street where plaintiff tripped and fell (see *Minott*, 230 AD2d at 720).

In opposition, plaintiff has failed to proffer any evidence that defendants created the condition or that it made a special use of the area so as to raise any triable issue of fact. Accordingly, defendants' motion for summary judgment is granted and the complaint dismissed.

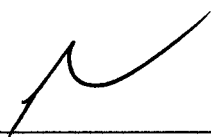
CONCLUSION

Based upon the foregoing, it is

ORDERED that the motion for summary judgment of plaintiff Deborah Katz (motion sequence 002) is denied in its entirety; and it is further

ORDERED that the motion for summary judgment of defendants CS Wall Street LLC, 15 Broad Street, LLC and FirstService Residential New York, Inc. (motion sequence 003) is granted and the complaint is dismissed against them.

The clerk shall enter judgment accordingly.

<u>1/8/2024</u> DATE	 SHLOMO S. HAGLER, J.S.C.							
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE