Tajani v City of New York
2024 NY Slip Op 30958(U)
March 11, 2024
Supreme Court, New York County
Docket Number: Index No. 159446/2019
Judge: Hasa A. Kingo

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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SHIRIN TAJANI,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Defendant.

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INDEX NO. 159446/2019

MOTION DATE 12/26/2023

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

Defendant, City of New York ("City") moves for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the complaint. The motion is unopposed. For the reasons stated herein, the motion is granted.

BACKGROUND AND ARGUMENTS

On May 31, 2019, Plaintiff Shirin Tajani ("Plaintiff") sustained personal injuries after she tripped and fell on a metal grate embedded in the sidewalk in front of 158 West 14th Street, New York, New York (NYSCEF Doc No. 75, Statement of material facts ¶ 2). On or about July 23, 2019, Plaintiff served a notice of claim on the City (NYSCEF Doc No. 74, Simonelli affirmation ¶ 3). In her notice of claim, Plaintiff alleges that she tripped and fell "because of a raised and defective grating located on the sidewalk in front of 158 West 14th Street" (NYSCEF Doc No. 78, Notice of Claim at 1). On September 25, 2019, Plaintiff appeared for a hearing pursuant to General Municipal Law § 50-h (NYSCEF Doc No. 74, Simonelli affirmation ¶ 5). At the hearing, Plaintiff testified that her accident occurred on May 31, 2019, on 14th Street between 6th and 7th Avenue on a grate embedded in the sidewalk (*id*.). On September 27, 2019, Plaintiff commenced the instant action against City, The New York City Transit Authority ("Transit"), and Consolidated Edison Company of New York ("Con Edison") (*id*. ¶ 3). Issued was joined by service of the City's answer on December 12, 2019 (*id*.). On December 10, 2019, Transit served a Notice to Admit on Con Edison (*id*. ¶ 7). Con Edison served a Verified Reply to Transit's Notice to Admit on December 26, 2019, and then served its Supplemental Verified Reply on September 17, 2021, wherein Con Edison admitted that it owned, maintained, controlled, and inspected a vault and grate located on the sidewalk in front of 158 West 14th Street (*id*.). On November 3, 2021, Plaintiff was deposed (*id*. ¶ 6). Plaintiff testified that her accident occurred on a rectangular grate embedded in the sidewalk (*id*). Plaintiff identified the subject grate in a photograph marked as Exhibit C1 (*id*.).

Further, Plaintiff was asked to identify the exact area which caused her to fall, and she identified the raised border of the metal grating by placing a green "x" on the photograph (*id*.).

On May 31, 2022, Transit moved for summary judgment to dismiss the complaint against it for failure to state a cause of action on the grounds that it does not own, maintain, operate or control the public streets or the accident location (*id*. ¶ 3; NYSCEF Doc No. 28, Notice of Motion). The motion was granted, and the complaint dismissed against Transit pursuant to an order of the court dated September 29, 2022 (NYSCEF Doc No. 44, Order [Denise Dominguez, J.]). On August 31, 2023, Plaintiff filed the note of issue (*id*. ¶ 4).

The City now moves for summary judgment to dismiss the complaint against it on the grounds that it does not own the metal grate in question or the abutting building, did not cause or create the allegedly defective condition, and did not have notice of the condition. In support of its motion, the City offers uncontroverted evidence including testimony, pleadings, photographs, public records, and statutory regulations, which demonstrate that it does not own the building located at 150 West 14th Street, which abuts the accident location, (NYSCEF Doc No. 75, Statement of Material Facts ¶¶ 2-4) or the metal grate on which Plaintiff purportedly fell (*id*. ¶ 5). Additionally, the City cites to Con Edison's Supplemental Reply to Plaintiff's Notice to Admit, wherein Con Edison admits to owning, maintaining, controlling, and inspecting "the sidewalk vault and metal grating covering the sidewalk in the annexed photograph in front of 158 West 14th Street" (NYSCEF Doc No. 75, Statement of Material Facts ¶ 2; NYSCEF Doc No. 74, Simonelli affirmation ¶ 23). Further, the City points to Transit's unopposed motion for summary judgment, and Con Edison's failure to raise any issue of fact regarding ownership of the subject grate (NYSCEF Doc No. 74, Simonelli affirmation ¶ 23). The City also avers that summary judgment is proper because it did not have notice of the defective condition and that it did not cause or create the subject condition. In support of these arguments, the City proffers evidence that it conducted a two-year Department of Transportation ("DOT") sidewalk search for the segment of West 14th Street between 7th Avenue and 6th Avenue (NYSCEF Doc No. 74, Simonelli affirmation ¶ 8). The permits, corrective action requests, notices of violation, inspections, and complaints revealed by the search do not provide written notice of the subject condition (NYSCEF Doc No. 74, Simonelli affirmation ¶¶ 31-48). Additionally, the Big Apple Map relating to the subject location show no relevant symbols representing a "metal door or frame" in the location where Plaintiff's accident occurred (*id*. ¶ 49). Finally, the City argues that it did not cause or create the defective condition because none of the 161 work permits were issued to a City Agency or Contractor and there was no work conducted by the City in the subject location that would have caused or created the alleged condition (*id*. ¶ 53). Notably, no opposition has been filed.

DISCUSSION

Pursuant to CPLR § 3212(b), a motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-

moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [internal quotation marks and citation omitted]). Upon proffer of evidence establishing a prima facie case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). To be a "material issue of fact" it "must be genuine, bona fide and substantial to require a trial" (*Leumi Financial Corp. v Richter*, 24 AD2d 855 [1st Dept 1965]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin, 71 AD3d 1112, 1115* [2d Dept 2010] [internal quotation marks and citation omitted]).

It is well established that owners of real property have a duty to maintain their property in a reasonably safe condition (*Mejia v New York City Transit Auth.*, 291 AD2d 225, 225–26 [2002]). Additionally, Administrative Code § 7-210 imposes a non-delegable duty on the owner of the abutting premises to maintain and repair the sidewalk (NYC Admin. Code § 7-210[b]; *Collado v Cruz*, 81 AD3d 542, 542 [1st Dept 2011]). Administrative Code § 7-210 provides, in relevant part, the following:

> [T]he owner of real property abutting any sidewalk . . . 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[.]

(*id*.).

Where the City owns real property that abuts a sidewalk, or property is a one-, two-, or three-family residential property that is owner occupied and used exclusively for residential purposes, the City is liable for injuries or death caused by the failure to maintain the sidewalk (NYC Admin. Code § 7-210[c]). Accordingly, a threshold determination regarding liability for injuries that arise from a defective sidewalk condition is ownership of the property abutting the subject sidewalk (*Rodriguez v City of New York*, 70 AD3d 450, 450 [1st Dept 2010]). Absent evidence of ownership, occupancy, control, or a one-, two-, or three-family residential property, liability cannot be imposed on the City (NYC Admin. Code § 7-210[b]; *Gordy v City of New York*, 67 AD3d 523 [1st Dept 2009]).

In support of its motion, the City submits Plaintiff's notice of claim, testimony, and photographs to establish that Plaintiff fell on a metal grate embedded in the sidewalk located at 158 West 14th Street. The consistency of Plaintiff's pleadings, testimony, and photographic evidence are sufficient to establish that Plaintiff fell on a metal grate on the sidewalk located at 158 West 14th Street. As such, there is no material issue of fact regarding the location of the incident. The City also presents sufficient evidence to demonstrate that it did not own the building located at 158 West 14th Street and the building is a commercial building not used for residential purposes. Thus, the City has made a *prima facie* showing that it is entitled to summary judgment by demonstrating that it did not own the building abutting the subject sidewalk at the time of the

incident, and the building is not a one-, two-, or three-family residential property used for residential purpose.

Likewise, the City has made a *prima facie* showing that it did not own the subject grating. Accordingly, the City is not liable for covers or grating, or the area extending twelve inches outward from the perimeter of the hardware, unless it owns the covers or grating (*Storper v Kobe Club*, 76 AD3d 426, 427 [2010]). In further support of its position, the City points to Con Edison's Supplemental reply to Plaintiff's Notice to Admit, where Con Edison admits to owning, maintaining, controlling, and inspecting the sidewalk vault and metal grating covering the sidewalk in front of 158 West 14th Street. Con Edison does not dispute ownership of the metal grate. Accordingly, as the City has established that it did not own the building abutting the sidewalk where Plaintiff fell, and it did not own the grate which caused Plaintiff to fall, summary judgment dismissal of Plaintiff's complaint is warranted.

Accordingly, it is

ORDERED that the motion for summary judgment is granted and the complaint and cross-claims are dismissed against the City; and it is further

ORDERED that the claims against the remaining defendant Con Edison are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant the City of New York and dismissing the claims and cross-claims made against the City in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk of the Court is directed to transfer this matter to the inventory of a non-City part.

This constitutes the decision and order of the court.

3/11/2024
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	**X**	**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**