

McClamb v City of New York

2024 NY Slip Op 32888(U)

July 26, 2024

Supreme Court, New York County

Docket Number: Index No. 158395/2021

Judge: Jeanine R. Johnson

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JEANINE R. JOHNSON PART 52-M

Justice

-----X

YVETTE MCCLAMB,

Plaintiff,

- v -

THE CITY OF NEW YORK, HECTOR CASTRO, VERONICA PADRON

Defendant.

-----X

INDEX NO. 158395/2021

MOTION DATE 03/14/2024, 03/19/2024, 04/17/2024

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73, 74, 75, 76, 116, 117

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 005) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and oral argument heard on 7/24/2024, Defendants, Hector Castro, and Veronica Padron's motions for summary judgment pursuant to CPLR § 3212 are granted. Defendant, The City of New York's motion for an order to strike and vacate Plaintiff, Yvette McClamb's Note of Issue and Certificate of Readiness is granted and Defendant-Padron's cross-motion is denied as moot.

To succeed on a motion for summary judgment, the moving party must make a prima facie showing of entitlement to summary judgment as a matter of law by demonstrating the absence of any material issues of fact. See generally Friends of Thayer Lake LLC v. Brown, 27

N.Y.3d 1039 (2016). *Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d 824 (2014); CPLR §3212(b). “If the moving party makes out a prima facie showing, the burden then shifts to the non-moving party to establish the existence of material issues of fact which preclude judgment as a matter of law.” *Jacobsen*, 22 N.Y.3d at 833. If there are no material, triable issues of fact, summary judgment must be granted. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957).

This Court finds that Defendant-Castro and Defendant-Padron met its burden of showing that there are no material facts in dispute. Section 7-210 of New York City Administrative Code provides: the owner of real property abutting any sidewalk...shall be liable for any injury to property or personal injury...proximately caused by the failure of such owner to maintain such sidewalk in a reasonable safe condition...this subdivision shall not apply to one-, two- or three-family residential property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes. Defendant-Castro and Defendant-Padron individually own a three-family residential building which they reside in, as required by the statute. Therefore, Defendant-Castro and Defendant-Padron are not liable for Plaintiff’s injuries sustained by the defective condition on the sidewalk abutting their properties. Thus, Defendant-Castro and Defendant-Padron’s motions for summary judgment are granted.

Under NYCCRR 22 § 202.21(e), “within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect.”

This Court finds that discovery is not complete because the parties do not have a case scheduling order in place nor have the parties had a preliminary conference. Thus, the Court grants Defendant-The City of New York’s motion to strike the Note of Issue and Certificate of Readiness filed by Plaintiff and a preliminary conference is scheduled for the remaining parties on August 14, 2024, at 2:15pm. The Court denies Defendant-Padron’s cross motion to strike the Note of Issue and Certificate of Readiness because Defendant-Padron’s motion for summary judgment is granted and no longer a party in the case.

Accordingly it is hereby,

ORDERED that motion sequences 003 and 005 — Defendants, Hector Castro and Veronica Padron’s motions for summary judgment are granted, it is further

ORDERED that motion sequence 004 — Defendant, The City of New York’s motion to strike the note of issue and certificate of readiness is granted, it is further

ORDERED that motion sequence 004 — Defendant, Veronica Padron’s cross-motion to strike the note of issue and certificate of readiness is denied as moot, it is further,

ORDERED that the action is severed and continued against the remaining Defendant-The City of New York, 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;

ORDERED that the caption is amended to read as follows:

-----X

YVETTE MCCLAMB,

Plaintiff,

- v -

THE CITY OF NEW YORK

Defendant.

-----X

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, 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.

Motion Sequence 003 and 005

7/26/2024
DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED

APPLICATION: SETTLE ORDER NON-FINAL DISPOSITION GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

JEANINE R. JOHNSON, J.S.C.

Motion Sequence 004

7/26/2024
DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

JEANINE R. JOHNSON, J.S.C.