

**Padilla v City of New York**

2024 NY Slip Op 33337(U)

September 23, 2024

Supreme Court, New York County

Docket Number: Index No. 159235/2019

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

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

*Justice*

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ROSA PADILLA,

Plaintiff,

**INDEX NO.** 159235/2019

**MOTION DATE** 09/14/2022

**MOTION SEQ. NO.** 002

- v -

THE CITY OF NEW YORK, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, GEORGE WASHINGTON BRIDGE BUS STATION DEVELOPMENT VENTURE, LLC, UPPER MANHATTAN EMPOWERMENT ZONE DEVELOPMENT CORPORATION, PNC BANK, PNC FINANCIAL SERVICES GROUP, INC.

**DECISION + ORDER ON MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 70, 71, 72

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

Upon the foregoing documents, defendants PNC Bank and PNC Financial Services Group, Inc. (together, "PNC") move, pursuant to CPLR § 3212, for summary judgment to dismiss the complaint as against them. Plaintiff Rosa Padilla ("Plaintiff") opposes. For the reasons set forth herein, the motion is granted.

**BACKGROUND**

In this personal injury action, Plaintiff seeks damages for injuries sustained when she tripped and fell purportedly due to a metal track or seam in the sidewalk located in front of the address identified in the complaint as "4206-4208 Broadway" in Manhattan. On September 23, 2019, Plaintiff commenced this action by filing a summons and complaint. Issue was joined when PNC filed its answer on November 19, 2019. PNC filed this motion for summary judgment on September 14, 2022, but the case and motion were thereafter stayed pursuant to 11 U.S.C. § 362 due to the pending Chapter 11 bankruptcy proceeding of co-defendant and owner of the subject property, George Washington Bridge Bus Station Development Venture, LLC ("GWB"). This court, having been informed that the bankruptcy proceeding has been resolved and the automatic stay lifted, has restored this case to the court's calendar (NYSCEF Doc Nos. 73-74).

Citing to New York City Administrative Code §7-210, PNC argues that it did not owe a duty to Plaintiff because it was not an owner or lessor of the property where Plaintiff purportedly fell and it did not install the sidewalk seam or otherwise create the defect. In support of the motion, PNC submits photographs of the sidewalk seam and its lease for 4206b Broadway to demonstrate

that the alleged defect is located at 4208 Broadway, which was not owned or leased by PNC. PNC also asserts that it did not install or repair the sidewalk seam.

In opposition, Plaintiff argues that PNC's motion should be denied as premature because discovery is not complete and party depositions have not been held, the copy of PNC's lease agreement is not admissible, PNC has not proffered conclusive evidence that it did not have notice of the defective condition, questions of fact exist regarding whether PNC had a duty to maintain the sidewalk, and PNC has not demonstrated that it did not create or contribute to the defect.

## DISCUSSION

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]). "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]).

To maintain a cause of action in negligence, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Pasternack v Lab's Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). "The question of whether a defendant owes a legally recognized duty of care to a plaintiff is the threshold question in any negligence action" (*On v BKO Exp. LLC*, 148 AD3d 50, 53 [1st Dept 2017]). "In the absence of a duty, as a matter of law, there can be no liability" (*Pasternack*, 27 NY3d at 825). "Liability for a dangerous condition on property is predicated upon occupancy, ownership, control or a special use of such premises" (*Balsam v Delma Eng'g Corp.*, 139 AD2d 292, 296 [1st Dept 1988]). "The existence of one or more of these elements is sufficient to give rise to a duty of care" (*id.*). "Without a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm" (*Lauer v City of New York*, 95 NY2d 95, 100 [2000]).

Pursuant to New York City Administrative Code §7-210, the owner of real property abutting a sidewalk has a non-delegable duty to maintain the sidewalk "in a reasonably safe condition," such that they are "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" (Administrative Code of City of NY § 7-210 [a]-[b]; *Xiang Fu He v Troon Mgmt., Inc.*, 34 NY3d 167, 174 [2019] ["a landowner's duty under section 7-210 is an affirmative, nondelegable obligation"]). Generally, tenants are not liable to third parties for failure to repair a

sidewalk (*Collado v Cruz*, 81 AD3d 542, 542 [1st Dept 2011] [“Provisions of a lease obligating a tenant to repair the sidewalk do not impose on the tenant a duty to a third party”]). A tenant may only be liable to a third party “where a lease agreement is so comprehensive and exclusive as to sidewalk maintenance as to entirely displace the landowner’s duty to maintain the sidewalk” (*Hsu v City of New York*, 145 AD3d 759, 760 [2d Dept 2016]).

It is undisputed that GWB is the owner of 4206 and 4208 Broadway. PNC was the lessor of 4206 Broadway, as evidenced by a copy of the lease agreement between PNC and GWB.<sup>1</sup> As noted by Plaintiff, “there is no language in this lease that specifically states whether the Landlord or the Tenant are responsible specifically for the sidewalk” (NYSCEF Doc No. 67, Kong aff in opposition ¶ 33). Thus, PNC is not liable to third parties for failure to repair the sidewalk because the lease agreement is not “so comprehensive and exclusive as to sidewalk maintenance as to entirely displace the landowner’s duty to maintain the sidewalk” (*Hsu*, 145 AD3d at 760; *Collado*, 81 AD3d at 542). As such, it is the owner’s duty to maintain the sidewalk. Moreover, the photographs annexed to PNC’s motion demonstrate clearly that the sidewalk seam is located at 4208 Broadway (NYSCEF Doc No. 58, 61, 62). The sidewalk seam originates directly in front of the door to 4208 Broadway and does not extend onto the sidewalk abutting 4206 Broadway (NYSCEF Doc No. 58, Respondent’s Exhibit D; NYSCEF Doc No. 61, photographs). As a tenant of the neighboring property, PNC is effectively a stranger to 4208 Broadway and has no duty to warn or protect others from a defective condition on the neighboring property, unless it created or contributed to it (*see Galindo v. Town of Clarkstown*, 2 NY3d 633, 636 [2004]).

In an affidavit submitted in support of PNC’s motion, Dana Armstrong, Vice President of PNC Bank, National, Association, attests that “PNC never made any structural alterations or repairs to any portion of the sidewalk adjacent to the demised premises, or to any other portions of the sidewalk nearby, including the sidewalk in front of 4208 Broadway” and “PNC did not install, alter, or repair any sidewalk joint nearby to 4206b Broadway” (NYSCEF Doc 60, Armstrong aff ¶¶ 4-5). Whereas PNC did not own, occupy, or control 4208 Broadway, this is sufficient to meet PNC’s burden of proof on the motion. The complaint alleges in conclusory fashion that “defendants caused, suffered, and permitted the [] location to be, become and remain in its dangerous condition” (NYSCEF Doc No. 1, complaint ¶ 138). No additional factual allegations or evidence are offered by Plaintiff to support a finding that PNC installed the sidewalk seam or otherwise caused or created the alleged defect. Plaintiff’s mere speculation that PNC may have made use of the vacant property located at 4208 Broadway or that may have used heavy machinery that contributed to the allegedly defective condition is insufficient to raise a material question of fact for trial (*Caraballo v Kingsbridge Apt. Corp.*, 59 AD3d 270, 270 [1st Dept 2009] [mere speculation and conjecture insufficient to defeat motion for summary judgment]). Plaintiff’s assertion that a question of fact exists regarding notice is also unavailing. Because PNC does not owe a duty in the first instance, it does not need to show the absence of notice to establish entitlement to summary judgment (*see Lauer*, 95 NY2d at 95). As such, there are no material issues of fact for trial and the motion is granted.

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<sup>1</sup> Plaintiff’s assertion that the lease is inadmissible because “it is not clear that the subject contract provided in the underlying motion is authenticated” is unavailing. A copy of the lease is annexed to the affidavit of Dana Armstrong, Vice President of PNC Bank, National, Association, who attests that it is a “true and correct copy of the lease agreement between PNC Bank, National Association and landlord George Washington Bridge Bus Station Development Venture LLC” (NYSCEF Doc No. 60, Armstrong aff ¶ 2). No additional authentication is required.

Accordingly, it is

ORDERED that the motions for summary judgment of defendants PNC Bank and PNC Financial Services Group, Inc. are granted and the complaint is dismissed against them; and it is further

ORDERED that all cross-claims against said defendants by defendants PNC Bank and PNC Financial Services Group, Inc. are dismissed; and it is further

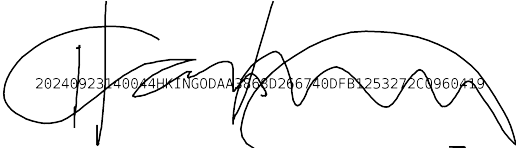
ORDERED that the said claims and cross-claims against PNC Bank and PNC Financial Services Group, Inc. are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants PNC Bank and PNC Financial Services Group, Inc. dismissing the claims and cross-claims made against them 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 schedule this matter for a preliminary conference on the first available date in the Differentiated Case Management Part located at 80 Centre Street, Room 103, New York, New York.

This constitutes the decision and order of the court.

9/23/2024  
DATE

  
HASA A. KINGO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE