

Abbani v Village of Lawrence
2024 NY Slip Op 35544(U)
October 1, 2024
Supreme Court, Nassau County
Docket Number: Index No. 600320/2022
Judge: Francis D. Ricigliano
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SUPREME COURT- STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. FRANCIS RICIGLIANO
Justice of the Supreme Court

-----X
VICTORIA ABBANI,

Plaintiff,

- against -

VILLAGE OF LAWRENCE, and CENTRAL MARKET,
LLC d/b/a SEASONS LAWRENCE,

Defendants.
-----X

DECISION and ORDER

Part 26

Index No.: 600320/2022

Motion Seq. 2,3

The following papers were read on this motion

NYSCEF DOCS

Motion Sequence 2

Notice of Motion, Affirmations, Exhibits, etc 19-44, 55-63, 65;
Opposition to Motion 58;
Reply 64.

Motion Sequence 3

Notice of Motion, Affirmations, Exhibits, etc 50-57, 69-70, 73.
Opposition to Motion 68;
Reply 72.

Relief Requested

Motion by the plaintiff for an Order, pursuant to CPLR § 203(f), granting leave to serve a supplemental Summons and Amended Complaint for the purpose of adding SSNS Express LLC (hereinafter "SSNS") as a party defendant (Seq. No. 2). SSNS submits opposition. The plaintiff submits a reply affirmation.

Defendant Village of Lawrence moves, pursuant to CPLR 3212, for an Order granting summary judgment in its favor (Seq. No. 3). The plaintiff submits opposition. The defendant submits a reply affirmation.

Background

The plaintiff commenced this action to recover for personal injuries sustained resulting from a trip and fall on February 17, 2021. The plaintiff alleges that she tripped and fell in a parking lot located at 330 Central Avenue, Lawrence. The plaintiff claims that, as she attempted to access a shopping cart, she was caused to fall by coming into contact with a large cement rock or boulder.

The instant action was originally commenced against the Village of Lawrence as well as Central Ave Market, LLC d/b/a Seasons Lawrence (hereinafter "Central"). By Order entered June 26, 2023, a default judgment was granted against Central.

Applicable Law

It is well established that the proponent of a motion for summary judgment must demonstrate entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *see also Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). The evidence will be construed in a light most favorable to the one moved against (*see Weiss v Garfield*, 21 AD2d 156 [3d Dept 1964]). Once the movant has made a *prima facie* showing of entitlement to judgment, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman, supra*). Conclusory allegations, bold assertions, or speculation are simply insufficient to successfully oppose a

motion for summary judgment (*id.*). A shadowy semblance of an issue is not enough to defeat a motion for summary judgment (*see LoBreglio v Marks*, 105 AD2d 621 [1st Dept 1984]).

Generally, liability for injuries sustained as a result of dangerous and defective conditions on public sidewalks is placed on the municipality, and not the abutting landowner (*Staruch v 1328 Broadway Owners, LLC*, 111 AD3d 698 [2d Dept 2013]). However, a landowner will be liable to a pedestrian injured by a defect in a sidewalk where the landowner created the defect, caused the defect to occur by some special use of the sidewalk, or breached a specific ordinance or statute which obligates the owner to maintain the sidewalk (*id.*; *see also Hanze v City of New York*, 166 AD3d 734 [2d Dept 2018]).

Where “a municipality has enacted a prior written notice statute, ‘it may not be subjected to liability for injuries caused by an improperly maintained street or sidewalk unless it has received written notice of the defect’” (*Weinstein v County of Nassau*, 180 AD3d 730 [2d Dept 2020], *quoting Cimino v County of Nassau*, 105 AD3d 883 [2d Dept 2013]). “However, the Courts have recognized an exception to the prior written notice requirement in circumstances where the municipality affirmatively created the defect through an act of negligence” (*Weinstein, supra*, *quoting Gutierrez-Contreras v Village of Port Chester*, 172 AD3d 1333 [2d Dept 2019]).

CPLR § 203(f) provides that “[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.”

A claim against a third party will relate back to the date upon which a plaintiff’s claim was originally interposed where “(1) both claims [must arise] out of the same conduct, transaction or occurrence; (2) the new party [must be] ‘united in interest’ with the original defendant [so that] he

[may] be charged with such notice of the institution of the action [and] will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well” (see *Liverpool v Averne Houses, Inc.*, 495 NYS2d 146 [2d Dept 1985]).

“[P]arties are united in interest where there is a jural or legal relationship giving rise to potential vicarious liability” (*LeBlanc v Skinner*, 103 AD3d 202 [2d Dept 2012]). “Underlying the doctrine of vicarious liability ... is the notion of control. The person in a position to exercise some general authority or control over the wrongdoer must do so or bear the consequences” (*Kavanaugh v Nussbaum*, 71 NY2d 535 [1988]). “Mere relatedness or commonality of ownership ... is insufficient to demonstrate unity of interest” (*Ramos v Brown*, 2014 NY Slip Op 32663 [Sup Ct, Bronx County 2014], citing *Mercer v 203 E. 72nd St. Corp.*, 300 AD2d 105 [1st Dept 2002]). “The fact that two defendants may share resources such as office space and employees is not dispositive” (*Xavier v RY Mgt., Co., Inc.*, 45 AD3d 677 [2d Dept 2007], citing *Zehnick v Meadowbrook II Assoc.*, 20 AD3d 793 [2005]).

Discussion

In support of its motion, the plaintiff argues that it should be granted leave to serve amended pleadings in accordance with the relation back doctrine, due to the relationship between SSNS and Central. The plaintiff provides documents from a bankruptcy action regarding an entity named “Seasons Corporate LLC” (hereinafter “Corporate”). As part of the Corporate bankruptcy action, SSNS purchased substantially all of Corporate’s assets and executed an assumption and assignment of Central’s tenancy under the supermarket lease at issue in this action. \

Here, while the plaintiff details the relationships between Central, Corporate, and various other entities, it offers no evidence that SNSS has a relationship with any of these entities beyond its agreements with Corporate to purchase assets and replace Central as tenant on the subject lease (*see LeBlanc, supra*). Even if SSNS and Central had common ownership and resources, as the plaintiff suggests, there has been no evidence to show that one exercises authority or control over the other (*see Kavanaugh, supra; see also Ramos, supra*). Accordingly, the plaintiff has failed to demonstrate that SSNS is “united in interest” with Central, and therefore has failed to establish entitlement for leave to amend based upon the “relation back” doctrine (*see Xavier, supra; see also Lilavois v JP Morgan Chase & Co.*, 2015 NY Slip Op 32724 [Sup.Ct, Nassau County 2015]).

In support of its motion, the Village submits the parties’ pleadings and the affidavit of Deputy Village Administrator/Clerk Geraldo Castro. In his affidavit, Mr. Castro avers that his office maintains individual address files for all addresses within the Village, which contain all notices of defects received for each address. Mr. Castro notes that these records are never purged and include notices that date back several decades. Mr. Castro adds that he reviewed the files for the roadway alongside 330 Central Avenue as well as for the adjacent parking lot, as it is owned by the Village. Mr. Castro states that his search and review of the Village’s written notice records revealed that the Village never received written notice of any defect in the parking lot where the plaintiff’s accident occurred. Mr. Castro additionally confirmed with the Village’s Department of Public Works that the Village did not place a rock in the subject parking lot for any reason.

With these submissions, the defendant has demonstrated entitlement to summary judgment as no prior written notice has been provided of any defects or unsafe conditions in the area of the plaintiff’s accident and it did not perform any work in the area that may have created such a defect (*see Weinstein, supra; see also Alvarez, supra*). As such, the burden shifts to the plaintiff to raise

an issue of fact (*see Zuckerman, supra; see also Smith v City of New York*, 210 AD3d 53 [2d Dept 2022], citing *Yarborough v City of New York*, 10 NY3d 726 [2008]).

In opposition, the plaintiff claims that the Village's motion should be denied as premature, as discovery has not been completed. The plaintiff alleges that the Village failed to demonstrate how their records are maintained and inspected and did not clarify whether additional records exist that may not have been reviewed. The plaintiff avers that it is impossible to determine whether the Village had prior written notice or created the defective condition that caused the plaintiff's accident until discovery is permitted to proceed.

Here, contrary to the plaintiff's contentions, there is no evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the instant motion were exclusively within the knowledge and control of the Village (*see Race v Village of Brewster*, 185 AD3d 1071 [2d Dept 2020], citing *Lazarre v Gragston*, 164 AD3d 574 [2d Dept 2018]). The plaintiff offers only mere hope or speculation that relevant evidence may be uncovered during the discovery process, which is an insufficient basis to deny the instant motion (*see Zuckerman, supra; see also Lazarre, supra*). Accordingly, the Village's motion is not premature (*see Race, supra*).

Upon the foregoing, it is hereby

ORDERED that the plaintiff's motion for leave to amend for the purpose of adding SSNS as a party defendant (Seq. No. 2) is denied, and it is further

ORDERED that the Village's motion for summary judgment (Seq. No. 3) is granted, and it is further

ORDERED that this matter shall be set down for an Inquest on the issue of damages to be awarded to plaintiff as against CENTRAL MARKET, LLC d/b/a SEASONS LAWRENCE in I.A.S. Part 26, Courtroom 151, on October 28, 2024, at 10:30 a.m. provided a Note of Issue has been filed by plaintiff at least ten (10) days prior thereto.

This shall constitute the Decision and Order of the Court. Any and all other relief not specifically requested herein is denied.

Dated: October 1, 2024

ENTER:



HON FRANCIS RICIGLIANO, J.S.C.

ENTERED

Oct 02 2024

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**