

Alexander v City of New York

2025 NY Slip Op 30805(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 508868/2020

Judge: Patria Frias-Colón

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 25
HON. PATRIA FRIAS-COLÓN, J.S.C.

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Angela Alexander,

Index # 508868/2020
Cal. #s 4-6 Mot. Seq. #s 4-6

PLAINTIFF,

DECISION/ORDER

-against-

Recitation as per CPLR §§ 2219(a) and/or 3212(b) of papers considered on review of this motion:

City of New York, New York City Transit Authority, BEC Continuum Housing Development Fund Company Inc., MTA Bus Company, the Hudson Companies, Lisa Management, Inc., and JCDecaux North America, Inc.,

NYSCEF Doc #s 77-97; 144-145 by Def. BEC
NYSCEF Doc #s 98-125; 143; 146-152 by D JC
NYSCEF Doc #s 126-129 by Def. Transit
NYSCEF Doc #s 133-139 by Plaintiff

DEFENDANTS.

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Upon reviewing the foregoing cited papers and considering oral arguments on September 4, 2024, the Court addresses the following motions pursuant to CPLR § 3212:

1. Defendants BEC Continuum Housing Development Fund Company Inc., the Hudson Companies, and Lisa Management, Inc.'s ("BEC") Motion for Summary Judgment to dismiss Plaintiff's complaint and any crossclaims (Motion Sequence #4) is DENIED.
2. Defendant JCDecaux North America, Inc.'s ("JC") Motion for Summary Judgment to dismiss Plaintiff's complaint and any crossclaims (Motion Sequence #5) is DENIED.
3. Defendants New York City Transit Authority and MTA Bus Company's ("Transit") Motion for Summary Judgment to dismiss Plaintiff's complaint and any crossclaims (Motion Sequence #6) is DENIED.

BACKGROUND

Plaintiff initiated this action by filing a summons and verified complaint on June 2, 2020,¹ seeking damages for personal injuries allegedly sustained from a slip and fall incident on March 5, 2019, near 261 Buffalo Avenue, Brooklyn, New York.² Plaintiff asserts she slipped on ice after alighting from a bus at the specified location.³ Defendant BEC answered the complaint on July 7, 2020;⁴ Defendant Transit answered on August 4, 2020;⁵ and Defendant JC answered on March 21, 2022.⁶

Defendant BEC filed its summary judgment motion (Motion Sequence # 4) on April 15,

¹ NYSCEF Doc. # 79.

² *Id.* at pp. 4-9.

³ NYSCEF Doc. # 89 at p. 14:13-15.

⁴ NYSCEF Doc. # 81.

⁵ NYSCEF Doc. # 84.

⁶ NYSCEF Doc. # 85.

2024,⁷ asserting it owed no duty to Plaintiff under Administrative Code §§ 7-210 or 19-152(a) to maintain the sidewalk flag in question, as it was within a designated city bus stop, making it the City's responsibility.⁸ Plaintiff opposed, arguing BEC does have a duty under § 7-210 and that factual disputes exist regarding the fall's location.⁹

Defendant JC filed its summary judgment motion (Motion Sequence # 5) on May 9, 2024,¹⁰ contending it owed no duty to Plaintiff under Administrative Code §§ 7-210 or 19-152(a) to maintain the area where Plaintiff fell.¹¹ Plaintiff opposed, citing factual disputes about JC's duty to maintain the area, referencing a contract between JC and the City of New York.¹²

The Transit Defendants filed their summary judgment motion (Motion Sequence # 6) on May 13, 2024,¹³ arguing it owed no duty to maintain the area where Plaintiff fell and only had a duty to stop where Plaintiff could safely disembark.¹⁴ Plaintiff opposed, asserting factual disputes about whether the Transit Defendants breached their duty by stopping where a large snow pile impeded her safe departure.¹⁵

DISCUSSION

Standard of Review

A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by presenting sufficient evidence to eliminate any material factual issues. See CPLR 3212 (b); *Alvarez v Prospect Hospital*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v City of New York*, 49 N.Y.2d 557, 562 (1980); *Korn v Korn*, 135 A.D.3d 1023, 1024 (3d Dept. 2016). Failure to do so necessitates denial of the motion. See *Alvarez*, 68 N.Y.2d at 324; *Winegrad v New York University Medical Center*, 64 N.Y.2d 851, 853 (1985). Once this showing is made, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish an issue of material fact requiring a trial. See CPLR § 3212; *Alvarez*, 68 N.Y.2d at 324; *Zuckerman*, 49 N.Y.2d at 562. “[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment.” *Banco Popular North America v Victory Taxi Management, Inc.*, 1 N.Y.3d 381, 383 (2004) (internal quotations omitted). The Court must view the evidence in the light most favorable to the non-moving party, granting all reasonable inferences in their favor. See *Fortune v Raritan Building Services Corp.*, 175 A.D.3d 469, 470 (2d Dept. 2019); *Emigrant Bank v Drimmer*, 171 A.D.3d 1132, 1134 (2d Dept. 2019).

Defendant BEC’s Summary Judgment Motion (Motion Seq. # 4)

⁷ NYSCEF Doc. # 77.

⁸ NYSCEF Doc. # 78 at pp. 8-14.

⁹ NYSCEF Doc. # 133 at pp. 2-6.

¹⁰ NYSCEF Doc. # 98.

¹¹ NYSCEF Doc. # 100 at pp. 7-12.

¹² NYSCEF Doc. # 134 at pp. 2-6.

¹³ NYSCEF Doc. # 126.

¹⁴ NYSCEF Doc. # 128 at pp. 2-7.

¹⁵ NYSCEF Doc. # 138 at pp. 2-4.

Under Administrative Code § 7-210, an abutting property owner has a duty to maintain the public sidewalk. *Moonilal v. Roman Cath. Church of St. Mary Gate of Heaven*, 225 A.D.3d 592 (2d Dept. 2024). However, the City retains responsibility for maintaining any part of the sidewalk within a designated bus stop location. *Id.* The burden rests on the defendant to demonstrate, *prima facie*, that the area where the alleged accident occurred falls within a designated bus stop maintained by the City. *See Id.* at 593; *Earle v. City of New York*, 223 A.D.3d 880 (2d Dept. 2024). In support of its motion for summary judgment, BEC submitted evidence including photographs of the area where Plaintiff fell; depositions from Plaintiff, Defendant BEC's Superintendent Juan Licon, Defendant Transit's Principal Transportation Planner Warren Berry, Defendant City's Supervisor in Department of Sanitation Jason Allard, and an MTA guide for "riding the bus."¹⁶

In this case, Defendant BEC failed to meet its *prima facie* burden of demonstrating that the area of the sidewalk where Plaintiff's accident occurred was within a designated bus stop location maintained by the City. *Moonilal*, 225 A.D.3d at 593-594; *Earle*, 223 A.D.3d at 880-881; *McCormick v. City of New York*, 165 A.D.3d 565 (1st Dept. 2018); *Shaller v. City of New York*, 41 A.D.3d 697 (2d Dept. 2007). BEC did not provide applicable statutes or evidence defining the parameters of a bus stop. Consequently, triable issues of fact exist regarding the location of the Plaintiff's fall. *See McCormick*, 165 A.D.3d at 565-566 ("However, absent any applicable statute or any evidence defining the parameters of a bus stop, a triable issue of fact exists as to whether the part of the sidewalk where plaintiff fell is within a designated bus stop that the City is required to maintain"). Since Defendant BEC failed to demonstrate entitlement to judgment as a matter of law, the Court need not consider the sufficiency of Plaintiff's opposition papers. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). Therefore, Defendant BEC's motion for summary judgment is denied.

Defendant JC's Summary Judgment Motion (Motion Seq. # 5)

To establish a *prima facie* case of negligence, a plaintiff must demonstrate the existence of a duty owed by the defendant, a breach of that duty, and that such breach was a proximate cause of injury. *Hao Huang v. Doe*, 169 A.D.3d 1014 (2d Dept. 2019) (quoting *Alvino v. Lin*, 300 A.D.2d 421 [2d Dept. 2002]). A defendant cannot be held liable where no duty of care is owed to the plaintiff. *Id.* at 1015. A defendant moving for summary judgment in a negligence case may sustain its initial burden by establishing, *prima facie*, that it was not at fault in the occurrence of the accident. *Id.* (quoting *Boulos v. Lerner-Harrington*, 124 A.D.3d 709 [2d Dept. 2015]). In support of its motion for summary judgment, JC submitted evidence including photographs of the area where Plaintiff fell; Affidavit of Rachel Sherman;¹⁷ depositions from Plaintiff, Defendant BEC's Superintendent Juan Licon, Defendant Transit's Principal Transportation Planner Warren Berry, Defendant City's Supervisor in Department of Sanitation Jason Allard, and Defendant JC's Regional VP of Operations Carmine Adisano.¹⁸

Here, Defendant JC failed to meet its *prima facie* burden of establishing it owed Plaintiff no duty of care and was not at fault in the accident. Defendant JC's Regional VP of Operations, Carmine Adisano, testified that, pursuant to a contract with the City, JC is responsible for removing snow

¹⁶ NYSCEF Doc. #s 89-96.

¹⁷ NYSCEF Doc. # 143 (The court notes that the parties stipulated to allow the submission of the affidavit of Rachel B. Sherman, Esq., attorney for Defendant JC to be considered with Defendant JC's initial submissions for its motion).

¹⁸ NYSCEF Doc. #s 113-123.

inside the bus shelter and within three feet around the shelter to the curb.¹⁹ However, JC failed to submit a copy of its agreement with the City in support of its motion, leaving triable issues of fact as to whether JC owed Plaintiff a duty of care and was at fault in the accident. *Ferrezza v. Das*, 210 A.D.3d 742 (2d Dept. 2022). Moreover, JC could not rely on evidence submitted for the first time in its reply papers, specifically the amended and restated franchise agreement.²⁰ *L'Aquila Realty, LLC v. Jalyng Food Corp.*, 103 A.D.3d 692 (2d Dept. 2013). Since Defendant JC failed to demonstrate entitlement to judgment as a matter of law, the Court need not consider the sufficiency of Plaintiff's opposition papers. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). Therefore, Defendant JC's motion for summary judgment is denied.

Transit Defendants' Summary Judgment Motion (Motion Seq. # 6)

Generally, Transit has no duty to exercise reasonable care with respect to areas of the sidewalks they do not own, maintain, operate, or control. *See Arpi v. New York City Tr. Auth.*, 42 A.D.3d 478 (2d Dept. 2007); *see also Pantazis v. City of New York*, 211 A.D.2d 427 (1st Dept. 1995). However, "a common carrier owes a duty to an alighting passenger to stop at a place where the passenger may safely disembark and leave the area." *Forminio v. City of New York*, 68 A.D.3d 924 (2d Dept. 2009) (quoting *Miller v. Fernan*, 73 N.Y.2d 844 [1988]). This duty requires the carrier to exercise reasonable and commensurate care in view of the potential dangers.

In this case, the Transit Defendants failed to demonstrate they met their duty to Plaintiff. Questions of fact exist regarding whether Transit breached its duty by stopping at a place where Plaintiff could not safely disembark, given the presence of snow and ice in her path.²¹ *See Jenkins v. New York City Tr. Auth.*, 262 A.D.2d 455 (2d Dept. 1999). As Defendant Transit failed to demonstrate entitlement to judgment as a matter of law, the Court need not consider the sufficiency of Plaintiff's opposition papers. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). As the Transit Defendants failed to demonstrate entitlement to judgment as a matter of law, the Court need not consider the sufficiency of Plaintiff's opposition papers. Therefore, Defendant Transit's motion for summary judgment is denied.

CONCLUSION

For the foregoing reasons, all indicated summary judgment motions (Motion Sequences #4, #5, and #6) are denied.

This constitutes the Decision and Order of the Court.

Date: February 28, 2025
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.

¹⁹ NYSCEF Doc. # 119 at pp. 16:24-25; 17:1-24.

²⁰ NYSCEF Doc. #s 150-151.

²¹ NYSCEF Doc. # 91 at pp. 75:20-25; 76:1-21.