Ferreras v City of New York
2025 NY Slip Op 34658(U)
December 3, 2025
Supreme Court, New York County
Docket Number: Index No. 156241/2022
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO, Justice	PART 05M
KARINA FERRERAS, Plaintiff,	INDEX NO. 156241/2022
- v -	MOTION DATE 11/17/2025
THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING AUTHORITY, Defendant.	MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32

were read on this motion for DISMISSAL.

Plaintiff Karina Ferreras (plaintiff") alleges that she sustained catastrophic injuries when she was struck in the eye by a firework while present in a common area of the Abraham Lincoln Houses complex on the night of July 4, 2021. Defendant the City of New York ("the City") now moves, pursuant to CPLR § 3211 (a)(7), to dismiss the complaint and all cross-claims as against it and to strike its name from the caption.

The City contends that it neither owned, occupied, operated, maintained, nor controlled the property where the incident is alleged to have occurred, and that, to the extent plaintiff now seeks to predicate liability upon alleged deficiencies in police protection or municipal supervision, the complaint does not and cannot establish a special duty owed by the City to plaintiff, as required under the public duty rule.

For the reasons that follow, the motion is granted.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from personal injuries allegedly sustained by plaintiff on July 4, 2021, at approximately 11:50 p.m., in an outdoor common area of the Abraham Lincoln Houses project, located on Madison Avenue between East 132nd Street and East 135th Street in Manhattan. Plaintiff alleges that, while lawfully present in that common space, she was struck in the right eye by a firework that had been illegally discharged by unknown individuals, resulting in the permanent loss of vision in that eye. Plaintiff further alleges that, for some eight to ten hours preceding the incident, a large crowd had been continuously engaging in the ultra-hazardous and illegal activity of setting off fireworks in the same common area.

Plaintiff served a notice of claim on or about September 29, 2021, asserting negligence on the part of the City of New York and/or the New York City Housing Authority ("NYCHA") in the ownership, operation, special use, inspection, supervision, maintenance, and control of the subject common area. She thereafter commenced this action by filing an amended summons and verified complaint on or about July 27, 2022, naming the City and NYCHA as defendants and alleging that they owned, operated, controlled, maintained, and/or managed the premises in question. The City answered on or about November 2, 2022, and NYCHA answered on or about November 18, 2022.

In support of the present motion, the City submits, among other things, an affidavit from Senior Title Examiner David Schloss ("Mr. Scholoss"), who attests that he conducted a title search for the Abraham Lincoln Houses located at 60 East 135th Street, New York, New York, designated on the tax map as Block 1757, Lot 20. According to Mr. Schloss, record title to Block 1757, Lot 20, as of July 4, 2021, was in NYCHA pursuant to a deed recorded on August 26, 1947. NYCHA's answer, in turn, admits that NYCHA owned, operated, controlled, maintained, and/or managed the subject location on the date of the alleged incident.

Plaintiff opposes the motion, contending that the City owed her a duty of care arising from its statutory, police, and supervisory responsibilities, and that her pleadings adequately set forth multiple theories of municipal liability, particularly in connection with alleged failures to supervise, regulate, and police the recurring illegal fireworks activity in and around the housing complex.

The City submits a reply, arguing that Plaintiff's theory sounds in the performance of governmental functions—most notably police protection—and is barred by the public duty rule in the absence of a pleaded and provable special duty, and that in any event the challenged conduct is protected by governmental function immunity.

ARGUMENTS

The City first argues that the complaint fails to state a cause of action sounding in premises liability because documentary evidence conclusively establishes that the City did not own, occupy, operate, maintain, or control the subject premises. Relying on Mr. Schloss's affidavit and the underlying deed, the City asserts that NYCHA, a separate public benefit corporation created under Public Housing Law § 401, held fee title to the property on July 4, 2021, and that NYCHA's answer affirmatively admits ownership and control. On this record, the City contends, it owed no duty of reasonable care with respect to the condition of the premises, and thus cannot be held liable for injuries allegedly resulting from activities occurring there.

In addition, the City notes that similar actions brought by plaintiffs against the City for accidents occurring on NYCHA property or in other locations shown by title search to be owned by other entities have been dismissed as against the City. The City cites O*rtiz v New York City Housing Auth*. (Sup Ct, NY County, May 31, 2022, Index No. 160234/2021, Kim, J.), *Simmons v New York City Tr. Auth*. (Sup Ct, NY County, May 13, 2014, Index No. 161541/2013, Kern, J.), and *Jones v New York City Dept. of Hous. & Preserv*. (Sup Ct, NY County, Feb. 19, 2013, Index No. 111636/2011, Chan, J.), in each of which the City was dismissed upon a showing that it neither owned nor controlled the premises where the accident occurred.

Turning to plaintiff's opposition, the City argues that, to the extent plaintiff attempts to shift her theory away from premises liability and towards alleged failures in policing, supervision, or regulation of fireworks, those claims challenge the performance of classic governmental functions. Under the public duty rule, the City argues, liability for the performance of governmental functions cannot attach absent a special duty owed to plaintiff individually, as opposed to the general public. The City maintains that plaintiff's notice of claim and complaint contain no allegations establishing any of the three recognized avenues for special duty—statutory duty with a private right of action, assumption of positive direction and control in the face of a known blatant safety violation, or voluntary assumption of a duty giving rise to justifiable reliance under *Cuffy v City of New York* (69 NY2d 255 [1987]).

The City further argues that, even if a special duty could somehow be inferred, the claims would nonetheless be barred by governmental function immunity. It notes that decisions regarding the allocation of police resources, enforcement of laws, and response to conditions such as illegal fireworks are inherently discretionary policy choices immune from judicial second-guessing under cases such as *Valdez v City of New York* (18 NY3d 69 [2011]), *McLean v City of New York* (12 NY3d 194 [2009]), and *Tango v Tulevech* (61 NY2d 34 [1983]).

Plaintiff, for her part, urges that the motion be denied. She emphasizes the serious and permanent nature of her injuries and the allegations that, for many hours prior to the incident, a large group of individuals had been discharging illegal fireworks in the same common area without meaningful police presence or municipal intervention. She argues that ownership of the land is not dispositive of the existence of a duty and that liability may arise where a municipality affirmatively assumes responsibilities for safety, maintenance, policing, or supervision, or where harm is foreseeable and preventable through reasonable municipal action. Plaintiff relies in part on language in *Howell v City of New York* (39 NY3d 1006 [2022]), citing *Cuffy*, to argue that the City's statutory, police, and supervisory responsibilities with respect to public safety and fireworks enforcement may give rise to a duty under certain circumstances.

Plaintiff characterizes the subject common area as an open, publicly accessible space adjacent to Madison Avenue and subject to regular NYPD patrol, New York City Fire Department regulation, and City-sanctioned fireworks enforcement programs. She asserts that the City cannot disclaim responsibility merely by referencing a decades-old deed when, in practice, it retained and exercised control over public safety, policing, and regulatory activities in and around the housing complex. Plaintiff contends that discovery is needed to explore the extent of the City's knowledge of, and response to, recurring illegal fireworks activity at this location, and argues that it is premature to dismiss her claims at the pleading stage.

Plaintiff also seeks to distinguish *Ortiz*, *Simmons*, and *Jones* on the ground that those cases involved traditional premises-defect claims arising from conditions such as ice or stairway defects, rather than an allegedly ongoing pattern of illegal fireworks activity implicating police protection, supervision, and crowd control in a publicly accessible housing-project courtyard. She contends that, when the allegations are liberally construed and all inferences are drawn in her favor, the pleadings adequately state cognizable theories of municipal liability that should be tested on a fuller record rather than dismissed at the outset.

DISCUSSION

On a motion to dismiss under CPLR 3211 § (a)(7), the court must afford the pleading a liberal construction, accept the facts as alleged in the complaint as true, and accord plaintiff the benefit of every possible favorable inference to determine whether the facts as alleged fit within any cognizable legal theory (*see e.g. Cron v Hargro Fabrics*, 91 NY2d 362, 366 [1998]). At the same time, "bare legal conclusions are not presumed to be true and are not accorded every favorable inference" (*Kupersmith v Winged Foot Golf Club, Inc*., 38 AD3d 847, 848 [2d Dept 2007]; *see also Maas v Cornell Univ*., 94 NY2d 87, 91 [1999]).

CPLR § 3211 (a)(7) expressly permits the court to consider evidentiary material submitted by a movant, including affidavits and documents that could be considered on a motion for summary judgment, to determine whether plaintiff has a cause of action—not whether one has been artfully pleaded (*see Rovello v Orofino Realty Co*., 40 NY2d 633, 636 [1976]; *Pace v Perk*, 81 AD2d 444, 449 [2d Dept 1981]). Where the documentary evidence submitted by the defendant "establish[es] conclusively that the plaintiff has no cause of action," dismissal is appropriate without converting the motion to one for summary judgment (*Rovello*, 40 NY2d at 636; *see Jacobson v Chase Manhattan Bank*, 174 AD2d 709 [2d Dept 1991]). Moreover, there is no temporal limitation on a motion under CPLR § 3211 (a)(7); such a motion may be brought "at any time" (*M.D. v Pasadena Realty Co*., 300 AD2d 235 [1st Dept 2002]).

Measured against these standards, the complaint fails to state a viable cause of action against the City under either a theory of premises liability or a theory predicated on alleged failures in police protection or municipal supervision.

A. The City Owed No Duty as a Premises Owner or Operator

It is axiomatic that "liability for a dangerous condition on real property is generally predicated upon ownership, occupancy, control or special use of the property" (*Balsam v Delma Eng'g Corp*., 139 AD2d 292, 296–297 [1st Dept 1988], *lv dismissed*, *lv denied* 73 NY2d 783 [1988]). Absent such a relationship to the property, a defendant ordinarily owes no duty of care with respect to the condition of the premises and cannot be held liable in negligence for injuries occurring there (*see Pulka v Edelman*, 40 NY2d 781, 782 [1976]).

Here, the City has submitted uncontroverted documentary evidence establishing that it did not own the subject property on July 4, 2021. The sworn affidavit of Mr. Schloss, together with the underlying deed, demonstrates that record title to Block 1757, Lot 20—encompassing the Abraham Lincoln Houses complex and, specifically, the area where plaintiff alleges she was injured—was held by NYCHA pursuant to a deed recorded in 1947. NYCHA's own answer admits that it owned, operated, controlled, maintained, and/or managed the subject premises on the date of the incident. Plaintiff does not contest these facts in opposition.

NYCHA is a distinct public benefit corporation created by the Legislature and is separate and apart from the City of New York (*see* Public Housing Law § 401). As such, NYCHA's obligations as owner or operator of the property cannot be imputed to the City. The mere fact that

the City created NYCHA or that NYCHA serves a public purpose does not render the City vicariously liable for NYCHA's alleged acts or omissions in its capacity as a property owner.

This conclusion is consistent with prior decisions of this court and others in this county. In *Ortiz v New York City Hous. Auth*. (Sup Ct, NY County, May 31, 2022, Index No. 160234/2021, Kim, J.), the court granted the City's CPLR § 3211 motion to dismiss claims arising from injuries sustained in a NYCHA stairwell, holding that NYCHA is a distinct entity and that the City, having established that it did not own, occupy, manage, maintain, or control the subject premises, owed no duty of care to the plaintiff. Similarly, in *Simmons v New York City Tr. Auth*. (Sup Ct, NY County, May 13, 2014, Index No. 161541/2013, Kern, J.), the court dismissed claims against the City predicated on a trip-and-fall in Penn Station where a title search revealed that the City did not own the specific location of the accident. And in *Jones v New York City Dept. of Hous. & Preserv*. (Sup Ct, NY County, Feb. 19, 2013, Index No. 111636/2011, Chan, J.), the court dismissed claims against the City and the Department of Housing Preservation where recorded deeds and registration documents established that they were not owners of the subject property.

Plaintiff attempts to avoid this result by reframing her claim as one grounded not in premises ownership, but in alleged failures to supervise, control, and police the common area. However, all of the allegations in the notice of claim and complaint concerning the City's purported negligence are rooted in the ownership, operation, maintenance, management, and control of the premises. To the extent plaintiff now seeks to rely on a theory divorced from property ownership—namely, that the City is liable for failing to prevent third parties from engaging in criminal fireworks activity—her claims sound in the performance of governmental functions, and a different analytical framework applies. Under that framework, as discussed below, the complaint still fails to state a cause of action against the City.

Because the City did not own, occupy, operate, maintain, or control the subject premises, it owed no duty of care to plaintiff in its capacity as a landowner or premises operator. On this ground alone, the complaint and any cross-claims against the City must be dismissed.

B. The Public Duty Rule and the Absence of a Special Relationship

To the extent plaintiff seeks to hold the City liable for alleged failures in policing, supervision, or regulation of fireworks activity, her claims challenge the performance of quintessential governmental functions. Under the public duty rule, when a plaintiff challenges the manner in which a municipality performs such governmental functions, the municipality is not liable in tort unless the plaintiff both pleads and proves the existence of a special duty owed to her, separate and apart from any duty owed to the public at large (*see Valdez v City of New York*, 18 NY3d 69, 75 [2011]; *McLean v City of New York*, 12 NY3d 194, 199 [2009]; *Lauer v City of New York*, 95 NY2d 95, 100 [2000]; *Palka v Servicemaster Mgt. Servs. Corp*., 83 NY2d 579, 584 [1994]). The special duty requirement "is not an exception to the governmental immunity doctrine, but rather a necessary element of any negligence claim against a municipality" where governmental action is challenged (*Valdez*, 18 NY3d at 75; *see Tara N.P. v Western Suffolk Bd. of Coop. Educ. Servs*., 28 NY3d 709, 715–716 [2017]).

The Court of Appeals has recognized three ways in which a special duty may arise: (1) where a statute is enacted for the benefit of a particular class of persons and authorizes—or fairly implies—a private right of action; (2) where the municipality voluntarily assumes positive direction and control in the face of a known, blatant, and dangerous safety violation; or (3) where the municipality voluntarily assumes a duty to act on behalf of the plaintiff, who justifiably relies on that undertaking to her detriment (*see Pelaez v Seide*, 2 NY3d 186, 199–200 [2004]; *Cuffy*, 69 NY2d at 260; *Albino v New York City Hous. Auth.*, 78 AD3d 485, 488 [1st Dept 2010]).

Here, even granting plaintiff every favorable inference, the complaint and notice of claim are devoid of factual allegations capable of establishing a special duty under any of these theories. Plaintiff does not identify any statute or local law that was enacted for the benefit of a defined class of persons, authorizes a private right of action, and was breached by the City in a manner that directly caused her injuries. General statutes or ordinances addressing fireworks use and public safety, designed to protect the public at large, do not create a special duty to individual members of the public (*see Metz v State of New York*, 20 NY3d 175, 180 [2012]; *McLean*, 12 NY3d at 200).

Nor does plaintiff allege that the City or its agents assumed positive direction and control over plaintiff in the face of a known, blatant safety violation, as in *Smullen v City of New York* (28 NY2d 66 [1971]), where the City inspector directed the decedent into an unshored trench in categorical violation of safety rules. There is no allegation that any City official directed plaintiff to remain in, or move into, a dangerous location despite clear awareness of an imminent hazard.

Finally, plaintiff does not allege facts satisfying the four elements of a voluntarily assumed special duty under *Cuffy*—namely, (1) an affirmative undertaking by the municipality, through promises or actions, to act on plaintiff's behalf; (2) knowledge by municipal agents that inaction could lead to harm; (3) direct contact between the agents and plaintiff; and (4) plaintiff's justifiable reliance on the municipality's undertaking (*Cuffy*, 69 NY2d at 260; *see Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 430–431 [2013]). Plaintiff does not allege any direct contact with police or other City agents prior to the incident, any specific assurances made to her personally, or any change in her conduct in reliance upon such assurances. Courts have repeatedly held that generalized statements, vague reassurances, or the mere existence of police patrols or emergency services do not suffice to establish a special duty (*see Valdez*, 18 NY3d at 81–84; *Brown v City of New York*, 73 AD3d 1113, 1114–1115 [2d Dept 2010]; *Ewadi v City of New York*, 117 AD3d 439 [1st Dept 2014]).

Plaintiff's opposition papers suggest, in substance, that the City should have anticipated and prevented the recurring fireworks activity by deploying more officers, increasing enforcement, or otherwise devoting greater resources to policing the area. However, "a municipality's general duty to furnish police protection is owed to the public at large and does not create a duty of care to a specific individual" absent a special relationship (*Valdez*, 18 NY3d at 76; *see Riss v City of New York*, 22 NY2d 579 [1968]). Acceptance of plaintiff's position would, in effect, render the City "an insurer against harm suffered by its citizenry at the hands of third parties" (*Valdez*, 18 NY3d at 75), contrary to well-settled precedent and the policy considerations underlying the public duty rule.

Because plaintiff has not pleaded, and on this record cannot establish, a special duty owed to her by the City, her claims challenging the adequacy of police protection and municipal supervision in connection with illegal fireworks activity fail as a matter of law. In the absence of a duty running specifically to plaintiff, there is no occasion to consider breach, causation, or damages (*see Valdez*, 18 NY3d at 80; *McLean*, 12 NY3d at 199–200).

C. Governmental Function Immunity

Even assuming, *arguendo*, that plaintiff could surmount the special duty requirement, her claims would be barred by governmental function immunity. Once a plaintiff demonstrates a special duty, a municipality may nonetheless avoid liability by showing that the alleged tortious conduct arose from a discretionary governmental function to which absolute immunity attaches (*see Valdez*, 18 NY3d at 75–76; *Lauer*, 95 NY2d at 99; *McLean*, 12 NY3d at 203). Discretionary acts—those involving the exercise of reasoned judgment and the weighing of competing policy considerations—are immune from judicial second-guessing, even if negligently performed, whereas ministerial acts—those involving adherence to a governing rule or standard with a compulsory result—may give rise to liability only where a special duty exists (*see Tango*, 61 NY2d at 41; *Matter of World Trade Ctr. Bombing Litig.*, 17 NY3d 428, 452 [2011]).

Allocation of police resources, decisions regarding the level and timing of patrols, and choices about how to respond to complaints of criminal activity are paradigmatic discretionary governmental functions (*see Devivo v Adeyemo*, 70 AD3d 587 [1st Dept 2010]; *Balsam v Delma Eng'g Corp.*, 90 NY2d 966 [1997]). The various judgments about how many officers to assign to a particular neighborhood on a holiday, how to respond to reports of fireworks, and how to balance those demands against other public safety needs throughout the city are precisely the types of policy-laden determinations that the immunity doctrine is designed to shield from tort liability.

To hold otherwise would invite courts to substitute their judgment for that of policymakers and line officers in real time, based on hindsight and in the context of individual lawsuits, undermining the City's ability to allocate scarce resources in a manner that serves the broader public interest. The Court of Appeals has repeatedly cautioned against such an approach (*see Valdez*, 18 NY3d at 75–76; *Mon v City of New York*, 78 NY2d 309, 313 [1991]).

Accordingly, even if plaintiff could establish a special duty—which she has not—the City's challenged conduct in providing police protection and supervising public spaces would fall within the ambit of discretionary governmental functions immune from tort liability.

In sum, the documentary evidence conclusively establishes that the City did not own, occupy, operate, maintain, or control the premises where plaintiff was injured and therefore owed no duty of care in its capacity as a landowner or premises operator. To the extent plaintiff seeks to recast her claims as arising from alleged failures in policing, supervision, or regulation of fireworks, those claims challenge the performance of governmental functions and are barred by the public duty rule because plaintiff has neither pleaded nor demonstrated a special duty owed by the City to her individually. Even were a special duty somehow present, the City's decisions regarding police deployment and public safety measures in response to fireworks activity constitute discretionary governmental acts protected by governmental function immunity.

Accordingly, it is hereby

ORDERED that the motion of defendant THE CITY OF NEW YORK, pursuant to CPLR § 3211 (a)(7), is granted in its entirety; and it is further

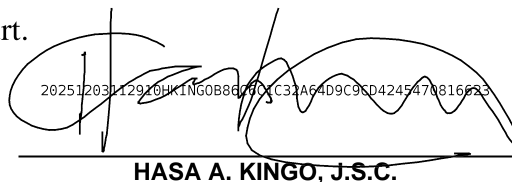
ORDERED that the complaint and any cross-claims are dismissed as against defendant THE CITY OF NEW YORK, with prejudice; and it is further

ORDERED that the Clerk of the Court is directed to amend the caption to reflect the dismissal of THE CITY OF NEW YORK and to substitute a caption listing only the remaining parties; and it is further

ORDERED that counsel for defendant THE CITY OF NEW YORK shall serve a copy of this decision and order with notice of entry upon all parties and upon the Clerk of the Court, who shall mark the records accordingly; and it is further

ORDERED that as THE CITY OF NEW YORK is no longer a party to this action, this matter is referred for further proceedings against the remaining party to a general IAS-part.

This constitutes the decision and order of the court.



12/3/2025			HASA A. KINGO, J.S.C.		
DATE					
CHECK ONE:	[ ]	CASE DISPOSED	[X]	NON-FINAL DISPOSITION	
	[X]	GRANTED [ ] DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER	[ ]	SUBMIT ORDER	
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