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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JAFFE Justice

PART 5

Index Number : 116101/2009
STICKFORD, MICHELE
vs.
170 SPRING STREET LLC
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to ____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2 3

Replying Affidavits _____ | No(s). 4

Upon the foregoing papers, it is ordered that this motion is

Motion is resolved as per attached order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/12/12

BJ
BARBARA JAFFE, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

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MICHELE STICKFORD,

Plaintiff,

-against-

170 SPRING STREET LLC, TIME EQUITIES, INC., and THE CITY OF NEW YORK,

Defendants.

----------x

Index No. 116101/09

Argued: 6/5/12
Motion seq. no.: 002

DECISION AND ORDER

BARBARA JAFFE, JSC:

For plaintiff:	**For 170/Time:**	**For City:**
Marc Rowin, Esq.	D. Bradford Sessa, Esq.	Leslie D. Knight, ACC
Lynch Rowin LLP	Law Office of Steven G. Fauth	Michael A. Cardozo
630 Third Ave.	40 Wall St., 28th Fl.	100 Church St., 4th Fl.
New York, NY 10017	New York, NY 10005	New York, NY 10007
212-682-4001	212-400-7154	212-442-6851

By notice of motion dated February 29, 2012, defendants 170 Spring Street, LLC (LLC) and Time Equities, Inc. (Time) (collectively, 170 Spring) move pursuant to CPLR 3212 for an order summarily dismissing the complaint and any cross claims against them. Plaintiff and defendant City oppose.

Plaintiff alleges that on September 30, 2008, she tripped and fell over the remains of a post, specifically a four-inch metal protrusion and a smaller metal bolt next to it, protruding from the sidewalk in front of a building located at 172 Spring Street (the premises), which was then owned by LLC and managed by Time. (Affirmation of D. Bradford Sessa, Esq., dated Feb. 29, 2012 [Sessa Aff.], Exh. A).

On January 28, 2011, plaintiff testified at an examination before trial (EBT) that she tripped over a metal piece that appeared to be a remnant of either an awning or sign post, and that

before her accident a store named Original Leather had occupied the ground floor of the premises and had an awning in front of it, which she remembered had been removed sometime before the accident. (*Id.*, Exh. F).

On July 25, 2011, George Alex Rusu testified at an EBT that in 2008, he was employed by Time as a superintendent and lived at the premises, and that the Original Leather store had a canopy or awning in front of it which was removed shortly after the store vacated the premises. Rusu identified one of the metal remains on which plaintiff tripped, the bolt, as having been part of the removed awning and the other remnant as having been part of a street parking sign that fell down and was removed. He did not know who removed it. (*Id.*, Exh. H).

At an EBT held on August 4, 2011, Joseph Farina, a supervising superintendent of maintenance in the Manhattan Sign Shop, a unit within City's Department of Transportation (DOT), testified that on October 1, 2008, a work order was prepared by DOT directing a work crew to repair an old drive rail stump and any other hazards in front of the premises, and that a drive rail is the support pole used by City on which signs are installed. On October 2, 2008, City removed the stump in front of the premises. He did not know whether the stump on which plaintiff tripped had been part of a post that had been installed by City, and he stated that if it constituted a dangerous condition on the sidewalk, City would have removed it, regardless of whether it owned or controlled the stump or had a duty to maintain it. (*Id.*, Exh. I).

170 Spring disclaims liability for plaintiff's injuries on the ground that it had no duty to maintain, repair, or remove the remains of the City-owned post. (Sessa Aff.).

Plaintiff argues that there are triable issues as to whether the stump was part of an awning or a City-owned sign post, and that if the stump was part of the removed awning, 170 Spring may

be held liable. (Affirmation of Marc Rowin, Esq., dated Apr. 19, 2012).

City similarly asserts that 170 Spring has not established, *prima facie*, that the stump was part of a City-owned sign post as opposed to the remains of an awning or some other post. (Affirmation of Leslie D. Knight, ACC, dated Apr. 20, 2012).

In reply, 170 Spring maintains that the stump was part of a City-owned sign post and that City's removal of it constitutes an admission that it owned or controlled it. (Reply Affirmation, dated May 16, 2012).

Pursuant to section 7-210 of the New York City Administrative Code, the owner of real property abutting a sidewalk, and not the City, has the duty to "maintain such sidewalk in a reasonably safe condition" and is liable for injuries arising from his failure to do so. (*Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 520-21 [2008]). Although abutting real property owners must maintain certain sidewalk hardware and appurtenances (NY City Admin. Code § 19-152), they need not maintain traffic signs and signposts, which is the obligation of DOT (NY City Charter § 2903[a][2]), and these signs and signposts are not considered part of the sidewalk for the purposes of section 7-210 (*see Smith v 125th St. Gateway Ventures, LLC*, 75AD3d 425 [1st Dept 2010]; *Calise v Millennium Partners*, 26 Misc 3d 1222[A], 2010 NY Slip Op 50208[U] [Sup Ct, New York County 2010]; *King v Alltom Props., Inc.*, 16 Misc 3d 1125[A], 2007 NY Slip Op 51570[U] [Sup Ct, Kings County 2007]). Therefore, abutting real property owners are not liable for injuries proximately caused by signs and signposts unless they caused or created the sign-related condition. (*Smith*, 75 AD3d at 425).

Here, 170 Spring offers no evidence establishing, beyond material dispute, that the stump was part of a City-owned sign post as the deposed witnesses' testimony was contradictory as to

whether the stump was part of a sign post or awning post. 170 Spring has thus failed to demonstrate, *prima facie*, that it may not be held liable for plaintiff's injuries. (*See Sehnert v New York City Tr. Auth.*, 95 AD3d 463 [1st Dept 2012] [plaintiff failed to show that piece of metal on which she tripped was part of sign installed or removed by City before accident]; *Raleigh v Broadway 48th-49th St. LLC*, 2008 WL 2556248, 2008 NY Slip Op 31682[U] [Sup Ct, New York County] [summary judgment denied as triable issues remained as to ownership of post which sat atop stump that had caused plaintiff's fall]).

Moreover, as Farina testified that City would have removed the stump from the sidewalk if it constituted a dangerous condition regardless of its ownership, City's removal of the stump after plaintiff's accident is no admission that it owned or had a duty to maintain the stump; it only constitutes some proof of ownership or control. (*See eg Cooke v City of New York*, 95 AD3d 537 [1st Dept 2012] [proof of post-accident repairs relevant to ownership and/or control]).

Accordingly, it is hereby

ORDERED, that defendants 170 Spring Street, LLC and Time Equities, Inc.'s motion for summary judgment is denied.

ENTER:

Barbara Jaffe, JSC

DATED: October 12, 2012
New York, New York