

Portillo v City of Mount Vernon
2013 NY Slip Op 33756(U)
December 13, 2013
Supreme Court, Westchester County
Docket Number: 54901/2011
Judge: William J. Giacomo
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

-----x
LIDIA PORTILLO,

Plaintiff,

Index No. 54901/2011

-against-

DECISION & ORDER

CITY OF MOUNT VERNON,

Defendant.

-----x
CITY OF MOUNT VERNON,

Third-Party Plaintiff,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY and
METRO NORTH COMMUTER RAILROAD,
Third- Party Defendants.

-----x
The following papers numbered 1 to 18 were read on third party defendants Metropolitan Transportation Authority ("MTA") and Metro North Commuter Railroad's ("Metro North") motion for summary judgment dismissing the third party complaint and defendant City of Mount Vernon ("the City") motion for summary judgment dismissing the complaint.

PAPERS NUMBERED

MTA and Metro North's Notice of Motion/Affirmation/Exhibits	1-3
The City's Notice of Motion/Affirmation/Exhibits	4-6
Plaintiff's Affidavits in Opposition to the City's Motion/Exhibits	6-9
MTA and Metro North's Reply Affirmation	10

The City's Reply¹ _____ 11

Based on the foregoing submissions, the third party defendants' motion is GRANTED and defendant's motion is DENIED.

Factual and Procedural Background

On January 3, 2011, plaintiff slipped and fell on ice on a sidewalk on a pedestrian bridge located at the intersection of South 10th Avenue and West 1st Street in the City of Mount Vernon. Plaintiff acknowledged that there was a sign indicating that the bridge was closed but she thought that only pertained to vehicle traffic, not pedestrian traffic.

Plaintiff commenced this personal injury action on August 29, 2011 and issue was joined by the City on October 12, 2011. The City commenced a third party action against the MTA and Metro North on August 2, 2012 and issue was joined on August 20, 2012. In its third party complaint, the City alleges that the MTA and Metro North own, maintain and control the bridge and erected a sign indicating that the bridge was closed, and were negligent in failing to inspect the bridge after the erection of the sign and in failing to block public access to the bridge.

MTA and Metro North now move for summary judgment dismissing the complaint on the ground that although they may own the bridge, maintaining the sidewalk and roadway of the bridge was the responsibility of the City. In support of their argument, the MTA and Metro North rely on the deposition testimony of Curtis Woods the Commissioner

¹The City submitted an affirmation in further support after submitting its' reply without seeking permission from the Court to do so, therefore, that affirmation was not considered.

of the Department of Public Works for the City. At his deposition, Mr. Woods stated that the City maintained the roadway and sidewalks of the bridge in question including snow plowing. The City was responsible for maintaining the sidewalk since the bridge was open to pedestrian traffic. The MTA and Metro North also seek the imposition of sanctions against the City for it's refusal to discontinue the action against them.

In opposition, the City argues that since the MTA and/or Metro North own the bridge they are responsible for the accident. Further, the City contends that the MTA and/or Metro North obstructed the sidewalk and roadway by placing barriers on the bridge thereby creating a hazardous condition.

The City also moves for summary judgment dismissing the complaint on the ground that it did not have prior written notice pursuant to Section 265 of the City Charter², of the icy condition which caused plaintiff's fall.

In opposition, the plaintiff argues that the City created the dangerous condition which caused her fall. Plaintiff states that she was walking on the sidewalk until nearing the end of the bridge where she encountered a large mound of snow which blocked the sidewalk. It had last snowed on December 26, 2010 and December 27, 2010. The City's work crews had cleared the snow from the sidewalk and plowed it in a mound near the end of the bridge blocking the entire sidewalk. Since the mound of snow blocked her path, plaintiff was forced to leave the sidewalk and attempt to traverse the roadway to get around

²Section 265 of the Mount Vernon City Charter provides in relevant part: no civil action shall be maintained against the City as a result of injuries sustained as a consequence of any sidewalk being in a defective condition unless the Commission of Public Works received prior written notice of the defect that caused the injury and the defect was not repaired within a reasonable time after receipt of said notice.

the mound of snow. It appeared to the Plaintiff that there was water on the roadway but was otherwise clear. The roadway appeared black, however, as soon as she left the sidewalk to step on the road she fell.

Discussion

A party moving for summary judgment must assemble *affirmative* proof to establish its entitlement to judgment as a matter of law. (*Zuckerman v. City of N.Y.*, 49 NY2d 557 [1980]). In order to meet its burden of entitlement to summary judgment as a matter of law, the City must establish that it did not receive prior written notice of an alleged the existence of snow or ice condition. (See *Kravatz v. County of Suffolk*, 40 AD3d 1042 [2nd Dept 2007]; *Ferreira v. County of Orange*, 34 AD3d 724 [2nd Dept 2006]).

MTA and Metro North's Motion

The MTA and Metro North have established prima facie entitlement to summary judgment dismissing the third party complaint. The City attempts to create an issue of fact by stating that since the MTA and Metro North placed barriers on the bridge to prevent vehicle traffic they created the dangerous condition which caused plaintiff's fall. However, plaintiff fell when she had to step around a large mound of snow which blocked the sidewalk. Plaintiff does not mention the barriers as a cause of her accident. Moreover, it is undisputed that the City was responsible for the maintenance and snow removal of the pedestrian walkway. Thus, there is no issues of fact precluding summary judgment dismissing the third party complaint.

Based on the foregoing, the MTA and Metro North's motion for summary judgment dismissing the third party complaint is GRANTED, however, their application for sanctions is DENIED.

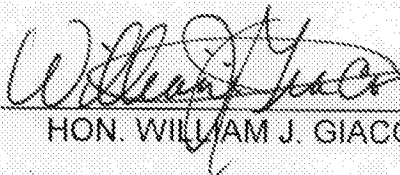
The City's Motion

According to plaintiff's deposition testimony, she slipped and fell when she stepped on the icy roadway because the sidewalk was blocked by a mound of snow created by the City. Further, plaintiff claims that the ice was formed by the melting snow from the large mound of snow which blocked the sidewalk. Therefore, there are issues of fact regarding whether the City created the condition that caused plaintiff's fall.

Based on the foregoing, the City's motion for summary judgment dismissing the complaint is DENIED.

The remaining parties are to appear in the Settlement Conference Part on March 3, 2014 room 1600 at 9:30 a.m. for further proceedings.

Dated: White Plains, New York
December 13, 2013


HON. WILLIAM J. GIACOMO, J.S.C.