

Romer v New York City Tr. Auth.
2008 NY Slip Op 33694(U)
March 25, 2008
Supreme Court, New York County
Docket Number: 109911/06
Judge: Donna M. Mills
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6

SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

ROMER, CYRILLE

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY, et al.,
Defendants.

INDEX No. 109911/06

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL NO. _____

The following papers, numbered 1 to 6 were read on this motion for Summary Judgment

EA
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Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

Answering Affidavits- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2, 3, 5 & 6 APR 02 2008

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CROSS-MOTION: YES NO

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Upon the foregoing papers, it is ordered that this motion for summary judgment is decided as follows:

This is an action for personal injuries allegedly sustained by plaintiff when he was walking on the sidewalk along 85th Street and Third Avenue in New York County. Plaintiff alleges that on October 18, 2005, while walking on Third avenue his foot got caught in a hole in the sidewalk. He further alleges that when he went back to examine the area, he saw a six inch metal square in the sidewalk that protruded over the sidewalk surface, and surmised that there used to be a bus shelter at the location.

MDATZ

The New York City Transit Authority (hereinafter “the Authority”) move for summary judgment dismissing the complaint and all cross-claims against it on the grounds that plaintiff and co-defendants have failed to state a cause of action against it and there are no triable issues of fact. Both the plaintiff and co-defendant, 1511 Third Avenue Associates (hereinafter “Associates”), oppose the motion.

APPLICABLE LAW & DISCUSSION

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). “But when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the trial calendar and thus deny to other litigants the right to have their claims promptly adjudicated” (Andre v Pomeroy, 35 NY2d 361 [1974]).

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in his favor (CPLR 3212[b]), and must do so by tender of evidentiary proof in admissible form.

Generally, liability for injuries sustained as a result of negligent maintenance of or the existence of dangerous and defective condition to public sidewalks is placed on the municipality or the abutting landowner (see Hauser v Giunta, 88 NY2d 449 [1997]; Winberry v City of New York, 289 AD2d 133 [1st Dept. 2001]). In the instant action, the Authority provided evidence that they are not responsible for the subject sidewalk where plaintiff was caused to fall. An affidavit of Karl Stricker, the General Superintendent of Special Operations for the Authority whose job responsibilities include insuring the normal operation of buses, the making of bus routes, and

requesting the placement of bus stops, confirmed that the Authority does not own, operate, maintain, or repair sidewalk bus stops and/or bus shelters. He further stated that the Authority does not put in or remove bus stop shelters anywhere in the City of New York. That responsibility he claims is held by the City of New York. It should be noted that the City is a co-defendant in this action, but does not oppose the Authority's motion for summary judgment.

In opposition, plaintiff and Associates have failed to produce evidentiary proof to establish the existence of a material issue of fact which would require a trial of the action against the Authority. First, plaintiff and Associates argue that the motion is premature because discovery has not been completed, and then contend that the Authority failed to establish that it did not create the condition during the removal of the bus shelter.

This court finds that there are no questions of fact as to the Authority's possible culpability. If the plaintiff did trip and fall at a location where a bus shelter once stood, it would not be the responsibility of the Authority, and any theory which casts blame on the Authority would be merely speculative. Thus, discovery would not lead to questions of fact pertaining to the negligence of the Authority.

Accordingly it is

ORDERED that the motion for summary judgment is granted and the complaint and all cross-claims is hereby severed and dismissed against the New York City Transit Authority, and the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED that the remainder of the action shall continue, and is respectfully referred to a New York City Part.

Dated: 3-25-08

Donna M. Mills
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

DONNA M. MILLS, J.S.C.

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