

**Garcia v City of New York**

2013 NY Slip Op 31073(U)

May 15, 2013

Supreme Court, New York County

Docket Number: 111383/2008

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

NEW YORK COUNTY

Index Number : 111383/2008

GARCIA, MILDRED

vs

CITY OF NEW YORK

Sequence Number : 001

DISMISS

PART 5

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

*CAL #39*

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

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

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

**FILED**

MAY 16 2013

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5-15-13  
MAY 15 2013

*[Signature]*  
\_\_\_\_\_, J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

- 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

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

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

-----X  
MILDRED GARCIA,

Plaintiff,

-against-

THE CITY OF NEW YORK and the  
NEW YORK CITY HOUSING DEPARTMENT,

Defendants.  
-----X

DECISION/ORDER  
Index No. 111383/2008  
Seq. No. 001

PRESENT:  
Hon. Kathryn E. Freed  
J.S.C.

HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR § 221(4), OF THE PAPERS CONSIDERED IN THE REVIEW OF  
THIS MOTION.

**FILED**

PAPERS

MAY 16 2013

NUMBERED

NOTICE OF PETITION AND AFFIDAVITS ANNEXED.....	1-2.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	.....
ANSWERING AFFIDAVITS.....	.....
REPLYING AFFIDAVITS.....	.....
EXHIBITS.....	3-8.....
OTHER.....	.....

**NEW YORK  
COUNTY CLERK'S OFFICE**

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Defendant City of New York moves for an Order pursuant to CPLR § 3211(a)(7) dismissing the complaint, or in the alternative, for an Order pursuant to CPLR § 3212 granting summary judgment and dismissing the complaint and all cross-claims against it. No opposition has been submitted by plaintiff or co-defendant, The New York City Housing Authority, ( hereinafter, "NYCHA").

After a review of the instant motion, all relevant statutes and case law, the Court grants the City's motion.

3]

Factual and procedural background:

Plaintiff brings the instant action to recover monetary damages for personal injuries allegedly sustained on May 4, 2008, when she tripped and fell on the "sidewalk/ramp/walkway located between the entrance of 326 Madison Street and 40 Gouverneur Street within the Vladeck Houses. The Claimant, a pedestrian, was caused to trip and fall when her foot got caught in a mis-leveled and uneven portion of the sidewalk/ramp/walkway located in the aforementioned location..." (see Notice of Claim annexed as Exhibit "A"). On May 15, 2008, plaintiff served her Notice of Claim. On May 20, 2008, she served an Amended Notice of Claim.

Plaintiff subsequently commenced the instant action via the service of a Summons and Complaint on August 20, 2008. The City joined issue via service of its Answer on September 9, 2008. It should be noted that the City asserts that to date, it has not received a Verified Answer on behalf of co-defendant NYCHA.

The City argues that the subject premises wherein plaintiff fell, is owned by NYCHA, and because said premises is not a public sidewalk, it exercised no control or maintenance of said premises. The City asserts that plaintiff's Amended Notice of Claim and Complaint does not state that she fell on a public sidewalk, but rather, specifies that she fell on a sidewalk/ramp/walkway located inside the confines of the Vladeck Houses.

In support of its argument, the City refers to and relies on the affidavit of Mr. David Schloss, annexed as Exhibit "D." In his affidavit, Mr. Schloss avers that he is a Senior Title Examiner with the New York City Law Department whose duties include the examination and certification of real estate titles in New York County. He also avers that he personally conducted title searches for 326

Madison Street and 40 Gouverneur Street, New York, New York, designated on the tax map as Block 260, Lot 1. Record title for Block 260, Lot 1 on May 4, 2008, was in the name of the NYCHA, pursuant to a deed recorded May 6, 1940.

The City also argues that pursuant to Public Housing Law § 401, NYCHA is a separate entity which is wholly distinct from the City. Since the City did not own, operate, manage, maintain or control the subject premises on the date of the incident, it did not owe any duty of care to plaintiff. Thus, as a matter of law, it cannot be held liable for plaintiff's injuries.

Conclusions of law:

"The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" ( Dallas-Stephenson v. Waisman, 39 A.D.3d 303, 306 [1<sup>st</sup> Dept. 2007], citing Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985] ). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of material fact ( *see* Zuckerman v. City of New York, 49 N.Y.2d 557 [1989]; People ex rel Spitzer v. Grasso, 50 A.D.3d 535 [1<sup>st</sup> Dept. 2008] ). "Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose, as is reliance upon surmise, conjecture or speculation" ( Morgan v. New York Telephone, 220 A.D.2d 728, 729 [2d Dept. 1985] ). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied ( Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 [1978]; Grossman v. Amalgamated Hous. Corp., 298 A.D.2d 224 [1<sup>st</sup> Dept. 2002] ).

It is well settled that NYCHA is a "distinct municipal entity not united in interest with [the] City" ( Torres v. New York City Hous. Auth., 261 A.D.2d 273, 275 [1<sup>st</sup> Dept. 1999] ). It is

independent of the City of New York ( see Roberts v. New York City Office of Collective Bargaining, 33 Misc.3d 1224(A), 943 N.Y.S.2d 794 ( Sup. Ct. N.Y. County 2011) ). The Housing Authority is not an alter ego of the City of New York and notice to the City may not be imputed to the Authority ( see Pavone v. City of New York, 170 A.D.2d 493 [2d Dept. 1991]; Seif v. City of New York, 218 A.D.2d 595 [1<sup>st</sup> Dept. 1995] ).

In the case at bar, the Court finds that the City has established its prima facie entitlement to summary judgment by proving that it does not own the subject premises. Thus, it cannot be held liable for any dangerous condition predicated upon the ownership of said premises.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that defendant City's motion for summary judgment is granted and the complaint and any cross-claims are hereby severed and dismissed as against it and the Clerk is directed to enter judgment in favor of it; and it is further

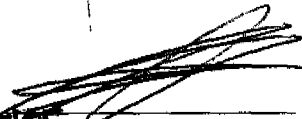
ORDERED that the remainder of the action shall continue; and it is further

ORDERED that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Defendant City shall serve a copy of this order on all other parties and the Trial Support Office at 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled; and it is further

ORDERED that this constitutes the decision and order of the Court.

DATED: May 15, 2013

**FILED** ENTER:  
MAY 16 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

  
Hon. Kathryn E. Freed  
J.S.C.

**HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT**