

Weason v Permanent Mission of Romania to the UN
2013 NY Slip Op 32111(U)
August 30, 2013
Sup Ct, New York County
Docket Number: 113830/2010
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
Justice

PART 46

CINDY WEASON

INDEX NO. 113836/10

-v-
PERMANENT MISSION OF ROMANIA TO THE UN
AND ROMANIA

MOTION DATE _____

MOTION SEQ. NO. 03

The following papers, numbered 1 to 3, were read on this motion ~~to~~ for summary judgment

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

Answering Affidavits — Exhibits _____ No(s) 2

Replying Affidavits _____ No(s) 3

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

The court denies defendant's motion for summary judgment pursuant to the accompanying decision. C.P.L.R. § 3212(b).

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

FILED

SEP 10 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/30/13

Lucy Billings, 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 46

-----X

CINDY WEASON,

Plaintiff

-against-

PERMANENT MISSION OF ROMANIA TO THE UN
and ROMANIA,

Defendants

-----X

APPEARANCES:

For Plaintiff

Stuart M. Rissoff Esq.
300 Garden City Plaza, Garden City, NY 11530

For Defendants

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125 Broad Street, New York, NY 10004

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COUNTY CLERK'S OFFICE
NEW YORK

LUCY BILLINGS, J.S.C.:

Defendants Permanent Mission of Romania to the United Nations and Romania have moved for summary judgment dismissing plaintiff Weason's action seeking damages for personal injuries. C.P.L.R. § 3212(b). Weason claims that she was injured May 31, 2010, when she tripped on a hole in the sidewalk in front of defendant Mission at 573-577 Third Avenue, New York County, causing her to fall. She further claims that defendants, as the owners of the abutting building, are liable to her because under New York City Administrative Code § 7-210 they bore a non-delegable duty to maintain the sidewalk adjoining the Mission in a reasonably safe condition and negligently failed to do so. The

Romania defendants do not deny the hole in the sidewalk or that the condition was unsafe, but based on diplomatic immunity under the federal Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611, deny any duty to repair the hole.

New York City Administrative Code § 7-210 provides:

a. It shall be the duty of the owner of real property abutting any sidewalk . . . to maintain such sidewalk in a reasonably safe condition.

b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk . . . shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. . . .

c. Notwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks . . . in a reasonably safe condition.
. . . .

The Administrative Code, on its face, does not make any exception or otherwise address these provisions' effect on real property owners entitled to diplomatic immunity from their enforcement, despite the United Nations Headquarters' longstanding presence in New York City that has led and is likely to lead to foreign governments' ownership of real estate in the City. This ownership in turn has led and is likely to lead to issues regarding the viability of claims against these real property owners for injury to persons or other property.

I. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff originally sued the City of New York as a defendant in this action. Upon a prior motion for summary judgment, the court (Engoron, J.), on April 25, 2012, granted the City of New York summary judgment dismissing the action against the City. C.P.L.R. § 3212(b). Justice Engoron ruled that "whether or not the City had notice of a defect at the location is irrelevant where, as here, § 7-210 of the Administrative Code applies and the City has not made special use of the sidewalk nor caused or created the condition complained of." Aff. of Howard S. Edinburgh Ex. J. Justice Engoron did not address the status of Romania or its Mission or Weason's claim against them. His decision, to the extent of the City's responsibility, is nevertheless law of the case, with the implicit consequence that Weason either may recover against the Romania defendants or not recover at all. People v. Evans, 94 N.Y.2d 499, 503 (2000); Dukett v. Wilson, 31 A.D.3d 865, 868-69 (3d Dep't 2006); Brownrigg v. New York City Hous. Auth., 29 A.D.3d 721, 722 (2d Dep't 2006); Kye Po Choi v. Q.R. Dev. Corp., 17 A.D.3d 538 (2d Dep't 2005). See BDCM Fund Advisor, L.L.C. v. Zenni, 106 A.D.3d 596, 597 (1st Dep't 2013); Chappelear v. Dollar Rent-A-Car, 33 A.D.3d 513 (1st Dep't 2006).

Before Weason's fall May 31, 2010, the New York City Department of Buildings (DOB) had served a Notice of Violation on defendant Mission, pursuant to Administrative Code § 7-210, requiring the Mission, as the abutting property owner, to repair

the sidewalk. Defendant Mission consulted with the government of Romania in Bucharest, which advised the Mission that, based on its diplomatic immunity under the Vienna Convention on Diplomatic Relations, Edinburgh Aff. Ex. P, the Mission was exempt from any obligation to repair a New York City sidewalk. Defendant Mission, however, did not advise DOB or the City of Romania's position, leaving the need and the responsibility for repair of the sidewalk abutting the Mission unaddressed.

II. DIPLOMATIC IMMUNITY

Plaintiff and the remaining defendants agree that USSA Cas. Ins. Co. v. Permanent Mission of the Republic of Namibia, 681 F.3d 103 (2d Cir. 2012), is dispositive of the legal issues defendants' motion presents. That decision addressed the liability under the tortious activity exception of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611, of a foreign diplomatic mission, as a landowner in New York City, for property damage caused by the defendant mission's failure to comply with a duty imposed by the New York City Building Code. The tortious activity exception provides that:

A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . (5) . . . in which money damages are sought for personal injury or death, or damage to or loss of property, occurring in the United States and caused by damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to . . . (A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretionary function be abused

28 U.S.C. § 1605(a) (emphasis added).

Here, the undisputed evidence defendant Mission presents, that Mission officials reached the decision that the Mission not to assume responsibility for the sidewalk repair through the officials' consultation with the Romanian government in Romania, leaves no question that the officials reached the decision while acting in the scope of their employment. This decision, not to undertake repair of the sidewalk hole, despite DOB's notice to do so, that breached defendants' non-discretionary duty required by New York City Administrative Code § 7-210, tortiously caused the injury Weason alleges. Beato v. Pakistan Embassy, 301 A.D.3d 459, 460 (1st Dep't 2003); USAA Cas. Ins. Co. v. Permanent Mission of the Republic of Namibia, 631 F.3d at 111. See, e.g., Santana v. City of New York, 100 A.D.3d 444 (1st Dep't 2012). Based on this evidence, under 28 U.S.C. § 1605(a), defendant "foreign state shall not be immune" from Weason's suit.

III. CONCLUSION

Consequently, the court denies the motion for summary judgment by defendants Romania and its Permanent Mission to the United Nations. C.P.L.R. § 3212(b). This decision constitutes the court's order. The court will mail copies to the parties' attorneys.

DATED: August 30, 2013



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

FILED

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