

Celik v 6448 Realty Assoc., LLC
2018 NY Slip Op 32697(U)
October 19, 2018
Supreme Court, New York County
Docket Number: 162203/2015
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** IAS MOTION 32

Justice

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INDEX NO. 162203/2015
GULNAR CELIK, KADIR BENJAMIN CELIK, MOTION DATE N/A, N/A
Plaintiff, MOTION SEQ. NO. 003 004
- v -

6448 REALTY ASSOCIATES, LLC, 48TH AMERICAS LLC, RCPI
LANDMARK PROPERTIES, L.L.C., RCPI 30 ROCK 22234849,
L.L.C., RCPI 600 FIFTH MEZZ, L.L.C., RCPI 600 FIFTH
HOLDINGS, L.L.C., RCPI MEZZ, L.L.C., RCPI HOLDCO, L.L.C.,
TISHMAN SPEYER PROPERTIES, INC., TISHMAN SPEYER
PROPERTIES, L.P., ROCKEFELLER CENTER, INC.,
ROCKEFELLER GROUP, INC., JOHN DOE

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73, 74, 75, 76, 77, 90, 92, 94, 99, 101, 102, 105, 106

were read on this motion to/for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83, 84, 85, 86, 89, 91, 93, 96, 97, 98, 100, 103, 104

were read on this motion to/for JUDGMENT - SUMMARY

Motion Sequence numbers 003 and 004 are consolidated for disposition. The motion (MS003) by defendants RCPI Landmark Properties, L.L.C., RCPI 30 Rock 22234849, L.L.C., RCPI 600 Fifth Mezz, L.L.C., RCPI 600 Fifth Holdings, L.L.C., RCPI Mezz, L.L.C., RCPI Holdco, L.L.C., Tishman Speyer Properties, Inc., and Tishman Speyer Properties, L.P. (collectively, "RCPI") for summary judgment is granted. The motion (MS004) by defendant 6448 Realty Associates, LLC ("6448") for summary judgment is granted. As these are the only remaining defendants, the complaint is dismissed.

Background

According to her bill of particulars, this personal injury action arises out of a trip and fall that allegedly occurred on November 28, 2012 on the south side of West 48th Street, between 64 West 48th Street and the *southeast* corner of West 48th Street and 6th Avenue in Manhattan (which means plaintiff was crossing 6th Avenue from the southeast corner to the southwest corner, toward 64 West 48th Street). Plaintiff Gulnar Celik (“plaintiff”) claims that she tripped over a barricade and that she suffered injuries to her right shoulder, left shoulder and left wrist. In her bill of particulars, plaintiff states that she was “lawfully traversing westward along the street/sidewalk” when the accident occurred (*see* NYSCF Doc. No. 73, ¶ 15).

RCPI insists that it did not own the property near where plaintiff fell. RCPI states that it owns the property commonly known as Rockefeller Center and that extends only to the north side of West 48th Street (Buneta *aff.*, ¶ 5). Ms. Buneta, a protection manager for Rockefeller Center, also states that the barrier depicted in a photo provided by plaintiff is clearly marked NYPD and that the “NYPD utilizes such barriers for purposes of crowd control during the holiday season and is responsible for setting up these barriers on the south side of 48th Street” (*id.*, ¶ 6).

Defendant 6448 argues that it had nothing to do with the police barricade and insists that plaintiff failed to allege that 6448 was the owner of the building at 64 West 48th Street on the date of the accident.

In opposition to both motions, plaintiff stresses that no depositions have been held in this matter and granting either of the motions would be premature. Plaintiff argues that defendants have not attached an aerial photograph showing where the accident happened in relation to existing property lines or surveillance videos. Plaintiff maintains that the affidavits submitted

should not be considered because the affiants do not have personal knowledge of the incident. Plaintiff emphasizes that further discovery is necessary because defendants possess facts essential to her opposition.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Lee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *aff’d* 99 NY2d 647, 760 NYS2d 96 [2003]).

“[W]hether a dangerous or defective condition exists on the property of another so as to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury” (*Trincere v County of Suffolk*, 90 NY2d 976, 977, 665 NYS2d 615 [1997] [internal quotations and citation omitted]).

The RCPI defendants have shown that they own the property on the north side of 48th Street, which is not where plaintiff fell. There is no allegation that RCPI or 6448 own the city streets, either 6th Avenue or 48th Street. And while the complaint fails to allege 6448 owns the building next to the sidewalk on the south side of 48th Street, for purposes of this motion, the Court assumes that omission was an error and leave would be granted to amend the complaint to make such correction if plaintiff made such a motion. But because the complaint is dismissed, and would be dismissed even if plaintiff did allege that 6448 owned building, such a motion is not necessary.

RCPI’s motion is granted because they have shown that they do not own 6th Avenue, 48th Street or the sidewalk on the south side of 48th Street.

The Court also grants all defendants’ motions on another basis: plaintiff failed to raise an issue of fact as to whether defendants can be held liable for an allegedly defective condition created by an NYPD barricade. Plaintiff does not dispute that she tripped over a metal barricade that had a sticker identifying it as belonging to NYPD (*see* NYSCEF Doc. No. 74). Plaintiff does not cite any case law suggesting that a property owner can be held liable for an accident caused by a barricade placed by the NYPD for crowd control. And although plaintiff’s bill of particulars fudges whether the barricade was on 6th Avenue, 48th Street or the sidewalk on the south side of 48th Street, no more discovery is necessary because plaintiff failed to raise an issue of fact regarding whether defendants had control over a police barricade.

The Court also observes that the photos of the barricade (provided by plaintiff to defendants in response to a D&I) show the barricade in the street. Obviously, even if defendants were property owners near where plaintiff fell, they would not be responsible for a trip and fall that occurred in the street (*see e.g., Gary v 101 Owners Corp.*, 89 AD3d 627, 627, 934 NYS2d 13 [1st Dept 2011] [emphasizing that landowners are only responsible for maintaining sidewalk flags that abut their property]). Plaintiff provided no basis for holding defendants liable for a purported defect in the street. And even if it was on the sidewalk, plaintiff has failed to cite any cases where a property owner (even assuming defendant 6448 owns the property) is responsible for barricades belonging to the NYPD.

Summary

While discovery may often be necessary to explore a plaintiff's allegations or information within a defendant's knowledge, the claims here simply do not require that defendants sit for depositions. The Court cannot ignore the fact that plaintiff seeks to hold defendants liable for tripping over an NYPD barricade.

Accordingly, it is hereby

ORDERED that the motion (MS003) by defendants RCPI Landmark Properties, L.L.C., RCPI 30 Rock 22234849, L.L.C., RCPI 600 Fifth Mezz, L.L.C., RCPI 600 Fifth Holdings, L.L.C., RCPI Mezz, L.L.C., RCPI Holdco, L.L.C., Tishman Speyer Properties, Inc., and Tishman Speyer Properties, L.P. for summary judgment is granted and the complaint is dismissed against these defendants with costs and disbursements to defendants as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion (MS004) by 6448 Realty Associates, LLC for summary judgment is granted and the complaint is dismissed against this defendant with costs and disbursements to defendant as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

10/19/18

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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