SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: Part C-2

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LINDA NEBEL,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WATER AND SEWER OPERATIONS and DAVID SOCCI,

Defendants.

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DECISION AND ORDER

Index No.: 152692/2017

Motion No: 3953-001

Recitation, as required by CPLR 2219(a) of the following papers numbered "1" through "4" were fully submitted on November 20, 2019:

	Papers Numbered
Defendant City of New York's Motion for Summary Judgment, Affirmation, and Affidavits in Support with Supporting Exhibits (Dated: September 13, 2019)	1, 2
Plaintiff's Affirmation in Opposition with Supporting Exhibits (Dated: October 18, 2019)	3
Reply Affirmation with Supporting Exhibits (Dated: October 30, 2019)	4

Upon the foregoing papers, the motion of the municipal defendant(s)[1], the City of New York (hereinafter collectively the "City") (Mot. Seq. 001) for summary judgment dismissing the complaint is granted, and the complaint is dismissed.

This matter arises out of a trip and fall occurring on the evening of January 6, 2017, on the sidewalk in front of 512 Page Avenue, Staten Island, New York. Plaintiff alleges that she sustained extensive injuries to, *inter alia*, her nose, right shoulder and right knee when she tripped over an elevated sidewalk flag, raised approximately "an inch and a half" from an adjacent flag, while walking to observe Christmas lights in the neighborhood (*see* Plaintiff's deposition transcript, City's Ex. C, pages 12:1-25 through 14:6).

In accordance with the preliminary conference order, searches of records for a period of two years prior to and including the date of the accident were conducted by Department of Transportation (DOT) paralegal Sweta Kawasaki, who searched the sidewalk located at "Page Avenue between Estelle Place and Academy Avenue (side of 512 Page Avenue)" (*see* City's Ex. G), and Gabriel Herman, who searched the sidewalk located at "Page Avenue between Jeffrey Place and Haywood Street (to include Estelle Place and Academy Avenue)(side of 512 Page Avenue)" (*see* City's Ex. I). The searches disclosed four permits, four hardcopy permits, four applications, and two Big Apple Maps, labeled Volume 5, Pages 528 and 570, dated February 2, 2004. Permits were issued to Consolidated Edison on August 31, 2015 (to open a sidewalk) and on October 26, 2016 (to replace sidewalk around a pole), and to Aquifer Drilling and Testing on March 8, 2016 and March 10, 2016 to test pits, cores or boring. No complaints,

[1] The summary judgment motion by defendant, David Socci (Mot. No: 4253-002), was granted by this Court by short form order on November 20, 2019, and judgment was entered dismissing the action and cross claims as against Mr. Socci on November 22, 2019.

sidewalk violations, repair orders, inspections, notifications for immediate corrective action, corrective action requests, notices of violations or 311 calls were found for the subject area.

City moves for summary judgment pursuant to CPLR 3212, arguing that plaintiff failed to establish prior written notice on the part of defendants in compliance with Administrative Code §7-201 and, moreover, that the facts herein do not constitute an exception[2] to the prior written notice requirement, which is a statutory prerequisite to maintaining an action against these defendants.

Critical to determination of summary judgment is an analysis of the legend(s) that appear on the February 2, 2004 Big Apple Maps regarding the sidewalk in front of 512 Page Avenue. "Maps prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc. and filed with the Department of Transportation serve as prior written notice of defective conditions depicted thereon" (*Fleisher v. City of New York*, 120 AD3d 1390 [2d Dept. 2014]).

Plaintiff claims that the presence of a solid horizontal line in front of 512 Page Avenue (*see* Plaintiff's Ex. 1) provides the City with written notice of a defectively raised sidewalk flag, while the City maintains that the same solid horizontal line, located within the street rather than the sidewalk in front of 512 Page Avenue, represents the location of a **water pipe** since that line is **accompanied by the markings "5' WP"** (*see* City's Reply Exhibits A, B), the legend for "Water pipes and size in inches". City also points to the **"OK"** marking on the 512 Page Avenue side of the street as proof that the sidewalk along the block was satisfactory.

It is well settled that "a municipality that has enacted a prior written notice statute may not be subjected to liability for injuries caused by a defective condition on a sidewalk unless it

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[2] The only exceptions to the rule that the City must have prior written notice of the allegedly defective condition giving rise to plaintiff's alleged injury are: (1) if the City created the defect through an affirmative act of negligence, or (2) if the defect is associated with a condition that conferred a benefit upon the City from a special use.

either has received written notice of the defect or an exception to the written notice requirement applies" (*Monaco v. Hodosky*, 127 AD3d 705 at 706 [2d Dept. 2015]). Thus, the Administrative Code of the City of New York §7-201(c) "limits the City's duty of care over its municipal streets and sidewalks by imposing liability only for those defects or hazardous conditions which its officials have been actually notified exist at a specified location" (*Katz v. City of New York*, 87 NY2d 241, 241[1995] [*internal citations omitted*]). The failure to demonstrate prior written notice leaves plaintiff without legal recourse against the City for its purported nonfeasance or malfeasance in remedying a defective sidewalk. "Because this prior written notice provision is a limited waiver of sovereign immunity, in derogation of common law, it is strictly construed" (*Katz v. City of New York*, 87 NY2d 241, at 243 [1995], *citing Laing v. City of New York*, 71 NY2d 912, 914; *Doremus v. Incorporated Vil. of Lynbrook*, 18 NY2d 362, 366).

Here, the City has established entitlement to judgment as a matter of law due to lack of prior written notice though, *inter alia*, the affidavits and search results of DOT's Sweta Kawasaki and Gabriel Herman (critically, the Big Apple maps and key), which set forth that the solid horizontal line relied upon by plaintiff as proving "notice" is, instead, indicative of the location of a water pipe within the roadway of Page Avenue.

In opposition, plaintiff has failed to raise a triable issue of fact. Plaintiff's reliance upon *Walker v. Jenkins*, 137 AD3d 1014[2d Dept. 2016] as support for the need of a trial is misplaced, in view of plaintiff's certainty as to the exact location and cause of her fall. Likewise, the horizontal line positioned within the roadway is not so "ambiguous" as to require a trial, since the letters "WP" written immediately below the line indicates, according to the map key, the size and location of a water pipe in the street (*see, e.g., D'Onofrio v. City of New York*, 11 NY3d 581 [2008]).

Accordingly, it is

ORDERED, that the motion of the municipal defendants, the City of New York, for judgment dismissing the complaint is granted; and it is further

ORDERED, that plaintiff's complaint is hereby dismissed.

This constitutes the decision and order of the Court.

ENTER:

HON. THOMAS P. ALIOTTA, J.S.C.

Dated: January 21, 2020