SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR, J.S.C. **PART** IAS Part 5
Justice

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MEREDITH LINNEHAN,

Plaintiff,

- v -

THE CITY OF NEW YORK, A. RUTH'S SONS, LLC, D/B/A A. RUTH & SONS REAL ESTATE, THE RUTH ASSOCIATES I LLC, JOHN DOE, JANE DOE, ABC CORP.

Defendants.

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INDEX NO. 150774/2016

MOTION DATE 02/13/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 55, 56, 57, 58, 59, 60

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOINDER).

Plaintiff Meredith Linnehan commenced this action against defendants City of New York (the City), A. Ruth's Sons, LLC, John and Jane Doe, and ABC Corp. to recover for injuries allegedly sustained in a February 24, 2015 slip and fall on an ice-covered sidewalk abutting the premises located at 15 East 29th Street, New York, New York, wherein plaintiff alleges that a leaking fire hydrant caused the icy condition. The City now moves pursuant to CPLR 3212 for summary dismissal of plaintiff's complaint. Plaintiff opposes the City's motion. For the reasons below, after oral argument, the City's motion is granted.[1]

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The movant's initial burden is a heavy one; on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833). If the moving party fails to make its prima facie showing, the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]).

However, if the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial

[1] Plaintiff's opposition indicates that this matter has been resolved as to the remaining defendants A. Ruth's Sons, LLC D/B/A/ A. Ruth & Son Real Estate, The Ruth Associates LLC, and that defendants Jane doe, John doe and Abc Corp. were neither identified nor served in these proceedings.

of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

In support of its motion, the City argues it is not liable for plaintiff's injuries, as the City does not own the property abutting the sidewalk where plaintiff's fall occurred, and that the City did not cause or create the subject defect. At the outset, the City demonstrates that that it did not own the property abutting the sidewalk where plaintiff's fall took place.

Administrative Code § 7-210(b) provides:

> "Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, 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. This subdivision shall not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes."

Administrative Code § 7-210(c) provides, in relevant part:

> "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 (other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition."

In support of its motion, the City submits the affidavit of David Atik (Atik), an employee of the New York City Department of Finance, which maintains the Property Tax System (PTS) database. Atik indicates that his search of the PTS database for 15 East 29th Street, identified as Block 859, Lot 15, New York, New York, revealed that on the date of plaintiff's fall, the City did not own the property, which is designated as Building Class O3, or office building. Thus, the City is not liable to maintain the subject sidewalk, including removing snow and ice, under Administrative Code § 7-210. The court must next determine whether the City created the subject condition or caused it to occur through a special use.

The City establishes, prima facie, that it did not create the condition that caused plaintiff's fall. The City submits the results of a search for Department of Sanitation (DOS) records concerning the subject sidewalk from February 11, 2015, through the date of plaintiff's fall, indicating that the DOS did not perform any snow or ice removal in the area where plaintiff fell (NYSCEF # 47, DOS aff).

The City also demonstrates that it did not have notice of the alleged defective condition. In support of its argument, the City submits the testimony of Anthony Gentilella (Gentilella), a field supervisor with the Department of Environmental Protection (DEP). Gentilella testified that there were two service requests in the two years prior to plaintiff's fall concerning the subject fire hydrant that involved a leaking condition: service request number 185733257, made in response to a complaint that the hydrant was emitting water, made on April 21, 2014, and repaired on May 22, 2014; and service request 185768152, made on June 19, 2014, and repaired the next day (NYSCEF # 48 at 30:5-32:6; 49:17-51:9; NYSCEF # 44 at 9; NYSCEF # 45 at 7). The remaining nine service requests concerning the subject fire hydrant are either duplicates or did not concern a leaking condition. Moreover, according to work order number 842767095 concerning the subject fire hydrant, a drainage condition repair was initiated on September 17, 2013, and completed on October 12, 2014 (NYSCEF # 45 at 12). Thus, the City demonstrates that complaints related to leaks concerning the subject fire hydrant were repaired, that the hydrant was in working condition on October 14, 2014, four months prior to plaintiff's fall, and that the City was not notified of the alleged defective condition through the date of plaintiff's fall.

In opposition, plaintiff fails to raise an issue of fact. Plaintiff's contention that the City was put on notice of the alleged defective condition by the April 21, 2014 and June 19, 2014 service requests and October 12, 2014 repair is without merit. As discussed above, the subject fire hydrant was repaired after each service request and in working condition on October 14, 2014. Likewise, plaintiff's argument that the City negligently repaired the subject hydrant is speculative and without a basis in fact. Indeed, other than plaintiff's testimony that she slipped on ice near the subject fire hydrant, plaintiff fails to present any evidence that the City negligently repaired the subject hydrant. Thus, plaintiff fails to demonstrate that the City had notice of the alleged defective condition or that the City negligently repaired the subject fire hydrant.

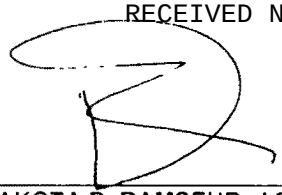
As the City is not liable for plaintiff's injuries, all cross-claims against the City must also be dismissed.

Accordingly, it is hereby

ORDERED and ADJUDGED that the City's motion pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims is GRANTED, and the Clerk of Court shall enter judgment accordingly; and it is further

ORDERED that the City shall, within (10) days of this order, serve and e-file a copy of this order with notice of entry upon all parties.

This constitutes the decision and order of the Court.



1/7/2021
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐	REFERENCE