

**Minoli v 529 Broadway Holdings LLC**

2021 NY Slip Op 30268(U)

January 29, 2021

Supreme Court, New York County

Docket Number: 151465/2016

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK

PART 52

Justice

-----X

INDEX NO. 151465/2016

GISELLE MINOLI,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

529 BROADWAY HOLDINGS LLC, SCF MANAGEMENT LLC, YDDO INC. D/B/A CAFE BARI,

DECISION + ORDER ON MOTION

Defendant.

-----X

529 BROADWAY HOLDINGS LLC, SCF MANAGEMENT LLC

Third-Party Index No. 595861/2016

Plaintiff,

-against-

YDDO INC. D/B/A CAFE BARI

Defendant.

-----X

529 BROADWAY HOLDINGS LLC, SCF MANAGEMENT LLC

Second Third-Party Index No. 595749/2017

Plaintiff,

-against-

THE CITY OF NEW YORK

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the Decision/Order of the Court is as follows:

Second third-party defendant, The City of New York, (the "City") moves this Court, pursuant to CPLR 3212, for an order granting summary judgment, dismissing the second third-

party complaint and all cross-claims. The City argues that under 7-210 of the Administrative Code of the City of New York (“7-210”), the City is not liable for plaintiff’s injuries. 529 Broadway Holdings LLC, SCF Management LLC, oppose the City’s motion and cross-move to dismiss plaintiff’s complaint. For the reasons set forth below, this Court grants the City’s motion for summary judgment in its entirety, dismisses the second third-party action and second third-party plaintiffs’ cross-motion is denied.

Plaintiff alleged that on June 24, 2014, she tripped and fell on a crack in the sidewalk at the northwest corner of Spring Street and Broadway in front of 529 Broadway in the City, County, and State of New York.

#### **Summary Judgment Standard**

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v City of New York*, 49 NY2d 557, 562, 427 [1980].

The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 AD2d 331 [1st Dept 1984] *aff’d* 65 NY2d 732 [1985].

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]. Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party.

*Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]. Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957].

**Administrative Code § 7-210**

Section 7-210 provides in pertinent part that “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.” *NY Admin Code* §7-210.

Also, “[n]otwithstanding 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. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.” *Id.*

To determine if the City is liable under 7-210, the court will look at: (1) the location of the sidewalk where the alleged accident transpired; (2) the non-City ownership of the real property that abuts the location where the alleged accident occurred; and (3) the non-exempt building classification of the abutting property. *Id.*

Therefore, the City makes out *prima facie* entitlement to summary judgment by establishing that the location of an occurrence meets the definition of section 7-210, which the City has established.

In opposition to the City's motion, second-third-party plaintiffs attempt to label the location of the accident as abutting or stemming from the curb which would render §7-210 inapplicable.<sup>1</sup> However, second third-party plaintiffs have provided no admissible evidence to support this contention. To the contrary, plaintiff testified that the defect that caused her to fall was on the sidewalk and circled the defect in the marked photograph. Consequently, there is nothing in the record that supports second third-party plaintiffs' arguments that the defect that caused the accident was in the curb. Accordingly, second third-party plaintiffs have failed to raise a triable issue of fact.

With respect to second-third party plaintiffs' cross-motion on the basis that the defect was trivial in nature, the movants have not met their burden. The photographs in the record are not clear and the second-third-party plaintiffs' have failed to rebut plaintiff's testimony that the defect was "about eight inches or more long. It was a couple or more inches wide and it was about one and a half to two inches deep, maybe more". See NYSCEF Doc. 62, City Ex. M 20:17-25. Accordingly, it is hereby

ORDERED that the City's motion is granted in its entirety and the second third-party complaint and all claims are dismissed as against the City of New York; and it is further

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

ORDERED that the Clerk is directed to enter judgment accordingly.

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<sup>1</sup> Although second third party plaintiffs' opposition papers also allege that the property owner was unable to correct the defect pursuant to an City regulation, during oral argument when asked for a response to the City's argument that the cited regulation did not relieve the landowner of liability in tort, second third-party plaintiffs abandoned that argument and stated its main argument was the alleged curb defect.

1/29/2021

DATE

*LF*  
HON. LYLE E. FRANK  
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

X

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

X

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

