

Alvarado v City of New York

2021 NY Slip Op 32756(U)

December 22, 2021

Supreme Court, New York County

Docket Number: Index No. 156174/2018

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 52M

Justice

-----X

MARIA ESPERANZA ALVARADO,

Plaintiff,

INDEX NO. 156174/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 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 were read on this motion to/for JUDGMENT - SUMMARY.

This action arises out of injuries allegedly sustained by plaintiff on April 4, 2017.

Plaintiff alleges she tripped and fell on a broken, raised portion of the sidewalk adjacent to a driveway of the parking lot for the United States Postal Service.¹ Specifically, the location of the alleged defect is located at sidewalk of West 126th Street, adjacent to the premises known as 365 West 125th in the County, City and State of New York.

Defendants, The City of New York and New York City Department of Transportation, (“City”), move this Court, pursuant to CPLR § 3212, for an order granting summary judgment, dismissing plaintiff’s complaint. The City contends that pursuant to Administrative Code of the City of New York § 7-210 (7-210), the City is not liable for plaintiff’s injuries as the City has no responsibility to maintain the subject sidewalk and it did not cause and create the alleged

¹ Plaintiff submitted sur-reply to this motion. Though the Court did not explicitly give the plaintiff leave to submit these papers, this submission was reviewed and considered in deciding this motion.

condition. Plaintiff opposes the instant motion on the grounds that a question of fact exists. For the reasons set forth below, the City's motion for summary judgment is granted.

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 [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 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*, 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.

The section also indicated that “[t]his 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.” *Id.*

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 Admin Code section 7-210, which the City has established.

In opposition to the City’s motion, plaintiff argues that a question of fact exists as to the applicability of Admin. Code §7-210 because the location is owned by the federal government. However, plaintiff has provided no admissible evidence to support this contention nor does section 7-210 carve out an exception to property owned by the federal government. It is well established that a motion for summary judgment may not be defeated by mere speculation. Moreover, though the Court need not reach this, it would appear based on the information submitted by the plaintiff that the federal government could very well be found liable for the

plaintiff's accident. Consequently, plaintiff has failed to raise a triable issue of fact.

Accordingly, the motion is granted in full, and it is hereby

ORDERED that the complaint is dismissed in its entirety and the Clerk of the Court is directed to enter judgment accordingly.

20211222132138LFRANK0F577GE39634868A45930E6D95893AD


12/22/2021
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE