

Williams v City of New York

2022 NY Slip Op 32717(U)

August 9, 2022

Supreme Court, New York County

Docket Number: Index No. 156083/2021

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH

PART 52

Justice

-----X

INDEX NO. 156083/2021

RICHARD WILLIAMS

MOTION DATE 06/15/2022

Plaintiff,

MOTION SEQ. NO. 001

- v. -

THE CITY OF NEW YORK and NEW YORK CITY HOUSING AUTHORITY

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion for

SUMMARY JUDGMENT

This is an action for personal injuries allegedly sustained by plaintiff Richard Williams (plaintiff) on November 12, 2020, at the crosswalk at the Eastern corner of Avenue D and East Third Street, New York, New York. Plaintiff alleges that he slipped and fell on the metal portion of a curb in front of the Lillian Wald Houses, a housing development owned and operated by defendant New York City Housing Authority (NYCHA). At the time of the accident, plaintiff alleges that the metal portion of the curb was submerged in stormwater. Plaintiff claims that he was caused to trip and fall due to negligent and improper drainage and maintenance of the excess water present at the accident location.

NYCHA maintains that it is entitled to summary judgment, because it is not responsible for constructing, maintaining, or repairing curbs. Rather, NYCHA argues that the City of New York, not the abutting landowner, is responsible for tort injuries caused by defective curbs. Additionally, to the extent the curb on which plaintiff allegedly slipped was submerged in stormwater, NYCHA contends that responsibility for the operation and maintenance of the sewer

system lies with the Commissioner of the New York City Department of Environmental Protection. In support of its motion, Defendant NYCHA submits a transcript of plaintiff's 50-h hearing (Exhibit G); photo exhibits of the curb at issue (Exhibit H); and an affidavit by Victor Marti, Supervisor of Grounds at the Lillian Wald Houses (Exhibit I), which states, in relevant part, that that NYCHA did not make special use of the curb or storm drains in the vicinity of plaintiff's accident.

In opposition, plaintiff argues that the instant motion is premature, as it was made prior to the meaningful exchange of discovery. Plaintiff also argues that triable issues of fact exist which preclude summary judgment. Specifically, plaintiff raises the issue of whether NYCHA had constructive notice of recurring storm water pools on the street next to the curb at issue. Defendant the City of New York did not file any opposition to the motion. Plaintiff does not annex any exhibits or affidavits of anyone with personal knowledge to its opposition papers.

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). As such, 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 should not be granted where there is any doubt as to the existence of issues of fact. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v*

Masturzo, 168 AD2d 204 (1st Dept 1990), citing *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 (1st Dept 1989).

Pursuant to Administrative Code § 7-210, the owner of real property abutting the public sidewalk has a duty to maintain such sidewalk in a reasonably safe condition. The First Department has held that “[a]lthough section 7-210 does not define the term ‘sidewalk,’ Administrative Code § 19-101 (d) defines sidewalk as ‘that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, *but not including the curb*, intended for the use of pedestrians.’” *Brown v New York City Dept. of Transportation*, 187 AD3d 535, 536 (1st Dept 2020), quoting *James v 1620 Westchester Ave., LLC*, 105 AD3d 1, 4 (1st Dept 2013) (emphasis added); *see also See Ascencio v New York City Hous. Auth.*, 77 AD3d 592, 593 (1st Dept 2010). The only exception to the general rule that property owners are not responsible for maintaining curbs is when the owner either caused the defect to occur because of some special use or created the defect. *Id.*

Plaintiff’s 50-h testimony establishes that he was injured when he crossed the street and placed his foot “where [he] thought the curb was” and his foot slipped on the steel facing of the curb. (*See* Plaintiff’s Exhibit G at 20, 22, 34). As a matter of law, NYCHA is not responsible for maintaining the curbs unless it either caused or created the defect. *See Brown v New York City Dept. of Transport., et.al.*, 187 AD3d 535 (1st Dept. 2020); *Ascencio v New York City Hous. Auth.*, 77 AD3d 592, 593 (1st Dept. 2010); *Garris v City of New York, et al.*, 65 AD3d 953 (1st Dept. 2009) (same). Moreover, the duty to ensure that water on public streets flows into storm drains rests squarely with the City of New York. *See New York City Charter § 1403(b)(1)*;¹ *see also*

¹ New York City Charter § 1403(b)(1) states:

The commissioner [of environmental protection] shall have charge and control over the location, construction, alteration, repair, maintenance and operation of all sewers including intercepting

Bilotta v Town of Harrison, 106 AD3d 848 (2d Dept 2013); *Vanguard Tours, Inc. v Town of Yorktown*, 83 AD2d 866 (2d Dept 1981). Therefore, NYCHA owed no duty to repair and maintain either the allegedly defective curb or storm drain that caused plaintiff's injury.

Furthermore, NYCHA establishes through Victor Marti's affidavit that NYCHA did not make special use of the curb or storm drains in the vicinity of plaintiff's accident. (See Plaintiff's Exhibit I). Mr. Marti, who is responsible for "supervising the groundskeepers and overseeing their daily assignments on and around the grounds of the development," attested that he "never assigned groundskeepers to do anything involving the storm sewer system, storm drains, or inlet grates, nor [has he] ever directed them to construct, create, modify, maintain, inspect or repair anything on any public street, including the City's sewer system." (See NYCHA's Exhibit I, ¶¶ 1, 4). Nothing in the record suggests that NYCHA created the alleged defect or made special use of the curb.

In opposition, plaintiff argues that although Mr. Marti attributes the recurring stormwater pools to the sewer system, NYCHA fails to include expert evidence to corroborate Mr. Marti's conclusions. However, plaintiff fails to annex any evidence in admissible form to refute Mr. Marti's affidavit and does not cite to any legal requirement that expert evidence must be provided. Mr. Marti's affidavit establishes that NYCHA did not cause or create the allegedly defective condition, nor did it make special use of the curb or the public sewer system. Therefore, dismissal of plaintiff's claims against NYCHA are warranted as a matter of law. See *Ascencio v New York City Hous. Auth.*, 77 AD3d 592, 593 (1st Dept 2010) (affidavits of Housing Authority employees "sufficiently showed entitlement to summary judgment" where they did not know of any repairs made to, or special usage of, the accident location).

sewers and sewage disposal plants, and of all matters in the several boroughs relating to public sewers and drainage, and shall initiate and make all plans for drainage and shall have charge of all public and private sewers in accordance with such plans; and shall have charge of the management, care and maintenance of sewer and drainage systems therein.

Plaintiff's remaining argument that NYCHA's motion is premature is unavailing. Plaintiff has offered nothing but "mere hope or speculation" that it will uncover evidence sufficient to defeat the instant motion through the discovery process. *Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760 (2d Dept. 2006). No additional discovery is warranted here, where NYCHA had no duty to maintain or repair the subject curb, and it established that it neither caused, created, or made special use of the subject curb. *See Jackson v Diabate*, 274 AD2d 356 (1st Dept 2000). As plaintiff failed to raise a triable issue of fact, NYCHA's summary judgment motion is granted.

Accordingly, it is ORDERED that the motion for summary judgment of defendant New York City Housing Authority is granted and the complaint is dismissed against it; and it is further ORDERED that any cross-claims against said defendant by defendant the City of New York are dismissed; and it is further

ORDERED that the said claims and cross-claims against defendant NYCHA are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant New York City Housing Authority dismissing the claims and cross-claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the Court.²

8/9/2022

DATE



HON. LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

² The Court would like to thank Eva Zhou, J.D. Candidate, New York Law School with her assistance on this matter.