

<b>Karakosta v City of New York</b>
2022 NY Slip Op 32894(U)
August 25, 2022
Supreme Court, New York County
Docket Number: Index No. 157063/2019
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN PART 58

Justice

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INDEX NO. 157063/2019

ZARIFE KARAKOSTA,

Plaintiff,

MOTION SEQ. NO. 003

- v -

CITY OF NEW YORK, NEW YORK CITY PARKS
DEPARTMENT, and CENTRAL PARK 101 LLC,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 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

were read on this motion to/for SUMMARY JUDGMENT

In this personal injury action commenced by plaintiff Zarife Karakosta, defendant Central
Park 101 LLC moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint
and all cross claims asserted against it. Plaintiff opposes the motion. After consideration of the
parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided
as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from an incident on March 6, 2019 in which plaintiff was allegedly injured
when she tripped and fell on a brick surrounding a tree well located in front of the premises located
at 219 West 78th Street in Manhattan, which were owned by defendant Central Park 101 LLC (CP
101).

Plaintiff commenced this action by filing a summons and complaint against CP 101, the
City of New York ("the City"), and the New York City Parks Department ("the Parks

Department”) on July 18, 2019. Doc. 1. In her complaint, plaintiff alleged that she was injured when she fell on a sidewalk adjacent to the premises. Doc. 1.

CP 101 joined issue by its answer filed September 24, 2019, in which it denied all substantive allegations of wrongdoing. Doc. 6. Concomitantly with the filing of its answer, CP 101 demanded that plaintiff provide, inter alia, the identity of any notice witnesses of whom she was aware. Doc. 74. The City and the Parks Department joined issue by their answer filed November 22, 2021, in which they denied all substantive allegations of wrongdoing and asserted cross claims against CP 101 for contribution and contractual indemnification. Doc. 33.

In her bill of particulars dated January 17, 2020, plaintiff alleged that she was injured when she tripped on a brick on the sidewalk in front of the premises. Doc. 35 at par. 18. The same day, plaintiff served a discovery response representing that she was not aware of any witnesses. Doc. 75.

At her deposition, plaintiff testified that she was injured when she tripped on bricks surrounding a tree well in front of the premises. Doc. 39 at 13-14, 36. She admitted that she tripped after crossing the street in the middle of the block rather than at the intersection. Doc. 39 at 49-50.

Mark Gladstein testified that he was owner of Elite Promotion, a corporation which was a member of CP 101. Doc. 41 at 9. CP 101 purchased the premises in November 2018. Doc. 41 at 10. Although the building did not have a live-in superintendent or have a management company, there was a superintendent who removed garbage from the premises, cleaned the floors, and made minor repairs. Doc. 41 at 11-12. Gladstein represented that, from the time CP 101 purchased the building until the date of the alleged accident, the company did not receive any complaints about the tree well. Doc. 41 at 13-14. Additionally, CP 101 did not perform any work on the outside of

the building, including the tree well or the perimeter thereof. Doc. 41 at 17-19. Nor was he aware of anyone being injured by the tree well. Doc. 41 at 14, 19.

Michele Palmer, a forester for the Parks Department, testified that she did not believe that the City or the Parks Department placed the bricks around the tree well. Doc. 53 at 10, 31-32.

Plaintiff filed a note of issue and certificate of readiness on October 27, 2021. Doc. 25.

By order entered December 22, 2021, this Court dismissed the complaint insofar as asserted against the City and the Parks Department. Doc. 49.

CP 101 now moves, pursuant to CPLR 3212, for the relief set forth above. Doc. 51. In support of the motion, CP 101 argues that it is entitled to summary judgment as a matter of law because it was not responsible for the tree well. Doc. 52. It further asserts that it did not create or have notice of the allegedly defective condition. Doc. 52.

In opposition to the motion, plaintiff argues that the application is untimely. Doc. 65. Additionally, plaintiff submits the affidavit of her son-in-law, Aren Behrami, who is also the superintendent of 215 West 78<sup>th</sup> Street. Docs. 65, 67. Behrami represents that, after the building was sold in 2018, the condition of the bricks in the tree well changed. Docs. 65, 67.

## LEGAL CONCLUSIONS

Initially, contrary to plaintiff's contention, the motion is timely. As CP 101 asserts, the case scheduling order required motions for summary judgment to be filed within 180 days of the filing of the note of issue. Doc. 23. The note of issue was filed on October 27, 2021 and the instant motion was filed on December 27, 2021, within the mandated time period.

With respect to the merits, it is well settled that “[t]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v NY Univ.*

*Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). “The proponent must do so by tender of evidentiary proof in admissible form” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once met, the burden shifts to the opposing party, who must establish the existence of a triable issue of fact to defeat the summary judgment motion (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Here, CP 101 has established its prima facie entitlement to the branch of its motion seeking summary judgment dismissing plaintiff’s claims against it by submitting, inter alia, the sworn deposition testimony of the plaintiff, who said that she fell on the bricks surrounding the tree well, and the testimony of Gladstein, who testified that CP 101 did not have any notice of any dangerous condition involving the tree well, never received any complaints about the tree well, did not make any special use of the tree well, and did not perform any work on the tree well (*see Chulpayeva v 109-01 Realty Co., LLC*, 170 AD3d 798, 799 [2d Dept 2019]). Additionally, as CP 101 argues, section 7-210 of the Administrative Code of the City of New York, which renders landowners responsible for maintaining sidewalks adjoining their property, is not applicable to tree wells.

In opposition to the motion, plaintiff fails to raise an issue of fact regarding notice. This Court declines to consider the affidavit of Behrami, plaintiff’s purported notice witness, since plaintiff failed to provide his name in response to CP 101’s demand for witnesses and his identity was only disclosed after the filing of the note of issue and in response to the instant motion. (*See Samon v Roosevelt Is. Operating Corp.*, 202 AD3d 607, 608 [1st Dept 2022] *citing Alamo v New York City Hous. Auth.*, 118 AD3d 484, 485 [1st Dept 2014]; *Ravagnan v One Ninety Realty Co.*, 64 AD3d 481 [1st Dept 2009]). Furthermore, the affidavit, even if considered, does not raise triable issues of fact to defeat defendant’s prima facie showing insofar as it does not specifically state that CP 101, or anyone on its behalf, did anything to create a hazardous condition.

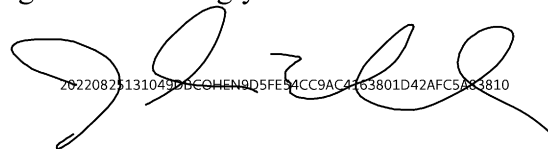
Since the claims against the City and the Parks Department have been dismissed, that branch of CP 101’s motion seeking summary judgment dismissing the cross claims against it is denied as moot.

Accordingly, it is hereby:

ORDERED that the branch of the motion by defendant Central Park 101 LLC seeking summary judgment dismissing the complaint against it is granted; and it is further

ORDERED that the branch of the motion by defendant Central Park 101 LLC seeking dismissal of the counterclaims against them by the City of New York and The New York City Parks Department is denied as moot; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



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8/25/2022

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE