

Kaestle v Plaza Arcade Realty LLC
2022 NY Slip Op 32898(U)
August 25, 2022
Supreme Court, New York County
Docket Number: Index No. 161576/2018
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

LOUISA KAESTLE,

Plaintiff,

- v -

PLAZA ARCADE REALTY LLC, WIENER-MEGA LLC,
PINNACLE GROUP NY LLC, CITY OF NEW YORK,

Defendant.

-----X

PLAZA ARCADE REALTY LLC, PINNACLE GROUP NY LLC,

Plaintiffs,

-against-

SAADI CONSTRUCTION CORP.,

Defendant.

-----X

INDEX NO. 161576/2018
MOTION DATE 05/02/2022
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595269/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing papers, the motion by defendant, the City of New York (the "City"), for summary judgment is granted on default and for the reasons set forth below.

On December 11, 2018, plaintiff commenced the instant action for injuries allegedly sustained on December 28, 2017, when she tripped and fell on an "uneven tile" in the sidewalk abutting the property located at 32 West 48th Street, New York, New York (the "Property"). The City and defendants Plaza Arcade Realty LLC ("Plaza Arcade") and Pinnacle Group NY LLC ("Pinnacle Group") each interposed Answers asserting cross-claims against the other for

contribution (NYSCEF Doc. Nos. 45, 46). The City now moves for summary judgment dismissing the complaint and all cross-claims against it, contending that it is exempt from liability pursuant to Administrative Code §7-210.

In support of its motion, the City submits the affirmation of David Atik, an employee of the New York City Department of Finance (“DOF”), in which he attests that a review of the DOF’s Property Tax System database reveals that the Property was not owned by the City on the date of plaintiff’s accident and, moreover, that the Property is classified as an office building and not a one-, two-, or three-family residential property (NYSCEF Doc. No. 90 [Atik Aff. at ¶¶5, 6]). In addition, the City submits the affidavit of Stacey Williams, an employee of the New York City Department of Transportation (“DOT”), detailing the result of a record search she performed for the sidewalk of West 48th Street between Rockefeller Plaza and Sixth Avenue for the two-year period prior to and including the date of the subject incident (NYSCEF Doc. Nos. 86 [Williams Aff. at ¶ 3]). The City also submits these records referenced in William’s affidavit, none of which document any work performed by the City at the relevant location (See NYCEF Doc. Nos. 87, 88, and 89). Finally, the City submits an invoice documenting Plaza Arcade and Pinnacle Group’s payment for sidewalk repairs at the subject location made approximately four months prior to the incident as well as photos depicting those repairs (NYSCEF Doc No. 91).

DISCUSSION

“The 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 demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

Section §7-210 of the Administrative Code of New York shifts tort liability for injuries arising from a defective sidewalk from the City to the abutting property owner, except for sidewalks abutting one-, two- or three-family residential properties that are owner occupied and used exclusively for residential purposes (Santos v City of New York, 59 Misc 3d 1211[A] [Sup Ct, Bronx County 2018] citing Vucetovic v Epsom Downs, Inc., 10 NY3d 517, 520 [2008]). The City, however, may nevertheless be liable for a defect within a sidewalk where it caused and created the defective condition through an “affirmative act of negligence” (Id. citing Trawinski v Jabir & Farag Props., LLC, 154 AD3d 991, 994 [2nd Dept 2017]).

Here, the City established, through the Atik affirmation, that it did not own the Property where the accident occurred and that the Property was not a one-, two-, or three-family residential property in whole or in part owner-occupied and used exclusively for residential purposes (NYSCEF Doc. No. 90 [Atik Aff. at ¶¶5, 6]). The City has thus demonstrated that it is exempt from liability under Administrative Code §7-210 (King v City of New York, 2014 NY Slip Op 31428[U], *4 [Sup Ct, NY County 2014]). In addition, the Williams affidavit establishes that the City neither caused nor created the defect at issue since no sidewalk repairs were performed by the City at that location (NYSCEF Doc. Nos. 86 [Williams Aff. at ¶ 3]), (Mejia v Sobro Dev. Corp., 2017 Slip Op 30440[U], *3 [Sup Ct, NY County 2017]). Moreover, as the motion is unopposed, no issue of fact has been raised and the City has demonstrated its entitlement to summary judgment and dismissal of the complaint and all cross-claims asserted against it.

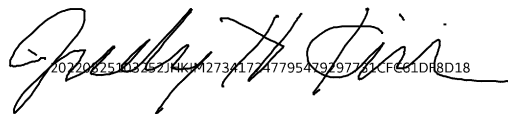
ORDERED that the City’s motion for summary judgment dismissing the complaint and all cross-claims as against it is granted and the complaint and cross-claims are hereby dismissed in their entirety as to the defendant the City of New York; and it is further

ORDERED that within twenty days of entry, the City shall serve a copy of this order with notice of its entry upon all remaining parties and upon the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerks Office (60 Centre St., Rm. 119) in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on this court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that upon proof of service of a copy of this order with notice of entry upon all parties, the Clerk of the Court is directed to enter judgment dismissing the complaint in its entirety as against defendant the City of New York and to amend the court’s records to reflect the change in the caption herein; and it is further

ORDERED that since the City is no longer a party to this action, the Trial Support Office shall reassign this action to the inventory of a non-City Part.

This constitutes the decision and order of the Court.



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8/25/2022

DATE

HON. JUDY H. KIM, 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