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| Papp v 31 Gramercy Park S. Owners Corp. |
| 2013 NY Slip Op 30619(U) |
| March 27, 2013 |
| Sup Ct, New York County |
| Docket Number: 112047/2010 |
| Judge: Kathryn E. Freed |
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice

PART 5

Index Number : 112047/2010
PAPP, KRISTINE KRISTEL
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
DISMISS CAL # 87

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) _____
Answering Affidavits — Exhibits _____ No(s) _____
Replying Affidavits _____ No(s) _____


Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED
MAR 29 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3-27-13
MAR 27 2013


HON. KATHRYN FREED, J.S.C.
JUSTICE OF SUPREME COURT

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X
KRISTINE KRISTEL PAPP,

Plaintiff,

-against-

31 GRAMERCY PARK SOUTH OWNERS CORP.,
MANHATTAN PARKING GRAMERCY CORP.,
THE CITY OF NEW YORK,

Defendants.

DECISION/ORDER
Index No.: 112047/2010
Seq. No.: 002

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

-----X
HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR §2219(a), OF THE PAPERS COMING UNDER THE REVIEW OF
THIS MOTION.

FILED
MAR 29 2013
NEW YORK
COUNTY CLERKS OFFICE

| PAPERS | NUMBERED |
|-------------------------------------------------|---------------|
| NOTICE OF MOTION AND AFFIDAVITS ANNEXED..... |1-2..... |
| ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED..... | |
| ANSWERING AFFIDAVITS..... | |
| REPLYING AFFIDAVITS..... | |
| EXHIBITS..... |3-5..... |
| STIPULATIONS..... | |
| OTHER..... | |

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Corporation Counsel for the City of New York, (hereinafter, “the City”), moves for an Order pursuant to CPLR§ 3211 dismissing plaintiff’s complaint against it; or in the alternative, for an Order pursuant to CPLR §3212 granting summary judgment, dismissing the complaint and all cross-claims against the City it. No opposition has been submitted.

After a review of the instant motion, all relevant statutes and case law, the Court grants the motion.

Factual and procedural background:

This is an action to recover damages for personal injuries allegedly sustained by plaintiff on June 14, 2009, when she tripped and fell while jogging on the sidewalk in front of 31 Gramercy Park South and/or 32 Gramercy Park South in New York County.

Consequently, plaintiff served a Notice of Claim on the City on September 4, 2009. On January 28, 2010, she appeared for a General Municipal Law 50-h hearing. On September 13, 2010, plaintiff filed a Summons and Complaint which was served on the City on November 26, 2010. On December 19, 2010, the City served its Answer. On June 4, 2010, plaintiff served her Verified Bill of Particulars as to defendant City. On August 17, 2012, she also served multiple photographs depicting the alleged accident location.

The City asserts that in her Notice of Claim, plaintiff alleged that her accident occurred “[w]hile jogging past a building located at 31 Gramercy Park South,” when she “tripped due to a protruding, uneven, raised and cracked sidewalk.” However, at her 50-h hearing, she testified that she was running on the sidewalk and “tripped on an uneven slab of sidewalk” in front of 32 Gramercy Park South. The City also asserts that Verified Complaint lists both addresses and her Verified Bill of Particulars asserts that her accident occurred on the sidewalk “abutting the buildings located at 31 Gramercy Park South and 32 Gramercy Park..”

The City argues that based upon the location of plaintiff’s alleged accident, it is not liable for plaintiff’s injuries pursuant to 7-210 of the Administrative Code of the City of New York. The City argues that based on plaintiff’s testimony, Notice of Claim, Verified Complaint, and Verified Bill of Particulars, it is clear that she tripped and fell due to an alleged defect on the sidewalk, and not on the curb, street, or something else.

The City annexes as its Exhibit “K,” an affidavit of David C. Atik, Esq., an attorney with the Department of Finance of the City of New York. In his affidavit, Mr. Atik avers in pertinent part, that he personally conducted a search of the Real Property Assessment Division database for records relating to both 31 and 32 Gramercy Park South. He also avers that 31 Gramercy Park South is located at Block 875 and Lot 48 for the County of New York, and 32 Gramercy Park South is located at Block 875 and Lot 47. Thus, the search reveals that on June 14, 2009, the City of New York was not the owner of either property. Additionally, Mr. Atik avers that his search results also indicate that 31 Gramercy Park South was classified as Building Class C6, (a walk-up cooperative), with 11 apartments, and not as a one-, two-, or three- family solely residential property, and 32 Gramercy Park South was classified as Building Class D4 (elevator operated), with 186 apartments, and not as a one, two-, or three-family solely residential property.

Conclusions of law:

“The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (Dallas-Stephenson v. Waisman, 39 A.D.3d 303, 306 [1st Dept. 2007], citing Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of material fact (*see* Zuckerman v. City of New York, 49 N.Y.2d 557 [1989]; People ex rel Spitzer v. Grasso, 50 A.D.3d 535 [1st Dept. 2008]). “Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose, as is reliance upon surmise, conjecture or speculation” (Morgan v. New York Telephone, 220 A.D.2d 728, 729 [2d Dept. 1985]). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied (Rotuba

Extruders v. Ceppos, 46 N.Y.2d 223 [1978]; Grossman v. Amalgamated Hous. Corp., 298 A.D.2d 224 [1st Dept. 2002]).

Effective September 14, 2003, the “New York Sidewalk Law,” now imposes upon the owner of real property abutting any sidewalk, “the duty...to maintain such sidewalk in a reasonably safe condition,” and provides that the owner “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 reasonable safe condition” (*see* Administrative Code of the City of New York § 7-210[a],[b]).

There is an exception to owner liability for “one-, two-, or three family residential property that isin whole or in part, owner occupied, andused exclusively for residential premises” (*see* Administrative Code of the City of New York § 7-210[b]). The City “shall not be liable for any injury to property or personal injury....proximately caused by the failure to maintain sidewalks,” except for sidewalks abutting owner-occupied residential properties with three or fewer units, or where the City itself is the owner of the abutting property (*see* Administrative Code of the City of New York § 7-210 [c]).

In the case at bar, the Court finds that the City has sufficiently established its prima facie showing that it does not own either 31 or 32 Gramercy Park South. Moreover, plaintiff has failed to rebut said showing.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that defendant City of New York’s motion for summary judgment is granted and the complaint and any cross-claims are hereby severed and dismissed against it; and it is further

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

ORDERED that the Trial Support Office is directed to reassign this case to a non-City part

and remove it from the Part 5 inventory; and it is further

ORDERED that defendant City shall serve a copy of this order on all other parties and the Trial Support Office at 60 Centre Street, Room 158.

ORDERED that this constitutes the decision and order of the Court.

DATED: March 27, 2013

MAR 27 2013

ENTER:



Hon. Kathryn E. Freed
J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**

FILED

MAR 29 2013

**NEW YORK
COUNTY CLERK'S OFFICE**