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

**PRESENT:** HON. HASA A. KINGO **PART** 05M

*Justice*

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SHAZELL HAMILTON,

Plaintiff,

- v -

THE CITY OF NEW YORK, ONE 9 THREE 9 CORPORATION, VINCENT SOLLAZZO LAMPKIN, AUDREY C. WATSON

Defendant.

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**INDEX NO.** 162136/2018

**MOTION DATE** 12/07/2022

**MOTION SEQ. NO.** 001

**AMENDED DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 142, 143, 144, 145, 146, 148

were read on this motion for SUMMARY JUDGMENT.

The following constitutes the amended decision and order of this court (Mot. Seq. 001):

With the instant motion, defendant Vincent Sollazzo Lampkin ("Lampkin") moves, pursuant to CPLR §3212 for summary judgment and dismissal of all claims and cross-claims asserted by plaintiff Shazell Hamilton ("plaintiff") as against him. Separately, defendant Audrey C. Watson ("Watson") and defendant One 9 Three 9 Corporation ("One 9") move for the same relief.[1] One 9 also seeks sanctions against plaintiff pursuant to 22 NYCRR 130-1.1(a) for plaintiff's pursuit of the instant litigation, and failure to discontinue this action as against One 9, even after One 9 was categorically found to have no ownership interest in the location at issue. Likewise, plaintiff cross-moves for sanctions and for permission to institute an action against 101 West 136th Street Realty Corp.

[1] Collectively, the moving parties to the instant motion as times are referred to as "defendants."

**BACKGROUND**

Plaintiff claims that on July 15, 2018, she sustained personal injuries on a public sidewalk in front of premises located at 101 West 136 Street, New York, New York. Plaintiff alleges in her bill of particulars that defendants, collectively, were negligent in the ownership maintenance and control of the property.

In October 2008, ten years prior to the date of the accident, litigation was commenced by Watson for a declaration of the ownership interests in the subject property. In her 2008 complaint, Watson also asserted claims for legal fees, an accounting, a temporary receiver, and to quiet title. Watson requested a declaration that "title to the [p]remises was properly devolved from Sonbar Properties, Inc. to 101 West 136th Street Realty Corp. and that as of May 4, 1978, the entity known as 101 West 136th Street Realty Corp. was the sole fee title owner of the premises."

After multiple years of litigation, the Supreme Court, New York County dismissed Ms. Watson's complaint in its entirety and adjudged that title remains in the name of 101 West 136th Street Realty Corp., and as such Lampkin, Watson and One 9 did not own the property on July 15, 2018, the date of plaintiff's alleged accident. Pursuant to Justice Tisch's Order, it was adjudged that "all deeds, including any deeds purporting to convey title or interest in the same premises, in whole or part, executed and/or recorded after 1996 were declared null and void" (*see* NYSCEF Doc. 30, Conclusion Paragraph [b]). It was additionally adjudged that the title remains in the name of 101 West 136th Street Corp (*see* NYSCEF Doc. 30, Conclusion Paragraph [d]).

More recently, on March 2, 2023, the Appellate Division, First Department affirmed Justice Tisch's decision voiding the aforementioned deeds and the ruling that title remained in the name of 101 West 136th Street Corp. (*see Watson v. Lampkin*, 214 AD3d 427 [1st Dep 2023]). Following the Appellate Division, First Department's affirmation of Justice Tisch's decision

conclusively establishing that there is no basis to hold defendants liable for plaintiff's alleged injuries, defendants sought to have plaintiff discontinue her claims as against them. Plaintiff refused, and the instant motion followed.

**DISCUSSION**

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact (*see Klein v. City of New York*, 89 NY2d 883 [1996]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence in admissible form sufficient to require a trial of material factual issues (*Amatulli v. Delhi Constr. Corp.*, 77 NY2d 525 [1999]). A motion for summary judgment should be "granted if, upon all the papers and proof submitted, the cause of action… shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR §3212[b]).

Moreover, a party may not defeat summary judgment with speculative arguments consisting of "mere conclusions, expressions of hope or unsubstantiated allegations" (*see Kalbacher v. Paez*, 215 AD2d 628, 628 [2d Dept 1995]; *citing Zuckerman v. City of New York*, 49 NY2d 557 [1980]). Where a party cannot demonstrate material triable issues in accordance with these standards, summary judgment is "a highly useful device for expediting the just disposition of a legal dispute for all parties and conserving already overburdened judicial resources" (*Forrest v. Jewish Guild for the Blind*, 3 NY3d 295, 312 [2004]). In addition, Administrative Code of City of N.Y. § 7–210 imposes a nondelegable duty on a property owner to maintain the sidewalk

abutting its property in a reasonably safe condition (*see Xiang Fu He v. Troon Mgt., Inc.*, 34 NY3d 167, 171 [2019]).

In support of their respective applications, Lampkin, Watson, and One 9 have all proffered affidavits and supporting documentation that establish, prima facie, that they were not the owners of the property at issue in this ligation at the time of the alleged incident and therefore did not owe plaintiff a statutory or common law duty of care. The documentation submitted includes the Appellate Division, First Department's decision affirming Justice Tisch's determination conclusively establishing that Lampkin, Watson and One 9 did not own the subject property on July 15, 2018, the date of plaintiff's alleged accident, and therefore cannot be held liable for plaintiff's alleged injuries.

Plaintiff's opposition to defendants' respective motions fails to raise a triable issue of fact with respect to their prima facie showings. To be sure, plaintiff merely argues that defendants have previously acknowledged ownership in their respective answers even where subsequent documentation proffered in support of the instant motions categorically proves otherwise. Plaintiff's opposition erroneously asserts that the respective motions must be denied because of admitted ownership contained in defendants' respective answers. Those representations, made upon information and belief, were made well before counsel had any opportunity to investigate the matter and before knowledge was made as to the litigation involving the property, which ultimately led to the decision of October 28, 2021, declaring that all prior deeds be deemed null and void and deeming 101 West 136th Street Realty Corp. as the owner of the property. There is no basis for plaintiff to conclude that summary judgment must be denied on the sole argument that counsel for defendants previously admitted ownership of the property at the very onset of the case when an investigation had not even commenced. The unrefuted evidence clearly shows that

defendants had had no ownership interest in the property and clearly did not own or have possession of the property at the time of plaintiff's accident. Moreover, as noted, the litigation involving the ownership of the property declared that all prior deeds be deemed null and void and deemed 101 West 136th Street Realty Corp. as the owner of the property. Plaintiff, in opposition, offers no evidence to counter that determination. Based on the unrefuted evidence, it is evident that defendants were not the owners of the subject property at the time of the alleged incident and therefore did not owe plaintiff a duty of care. Considering the foregoing, defendants are entitled to summary judgment as a matter of law.

Separately, contrary to plaintiff's assertions, summary judgment at this stage of the proceedings is not premature, under the circumstance. CPLR §3212(a) states in pertinent part that "any party may move for summary judgment in any action, after issue has been joined." Here, plaintiff does not argue that issue has not been joined. Rather, plaintiff contends that defendants' respective motions are premature because they have not had an opportunity to conduct depositions, and discovery has not been completed. Contrary to plaintiff's assertions, summary judgment is not premature merely because depositions have not been held. The "mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to [deny such a motion for summary judgment]" (*Nervaev v Solon*, 6 AD3d 510, 510-511 [2d Dept 2004]; *see also Flores v The City of New York*, 66 AD3d 599 [1st Dept 2009]). That is particularly true here, where under the circumstance presented, plaintiff is unable to establish defendants' ownership as a matter of law.

In addition, One 9's application for sanctions is denied. "In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or

factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party" (NYCRR 130–1.1[c]). Here, contrary to the One 9's contention, the conduct of plaintiff's counsel, while frustrating, was not so egregious as to rise to the level of frivolous conduct sufficient to warrant the imposition of monetary sanctions and the award of costs pursuant to 22 NYCRR 130–1.1 (*see Zhuoya Luo v. Wensheng Wang*, 176 AD3d 1016 ; *Providence Wash. Ins. Co. v. Munoz*, 85 AD3d 1142, 1144). Accordingly, the branch of One 9's motion which was pursuant to 22 NYCRR 130–1.1(a) to impose sanctions for frivolous conduct and for award of costs, is denied.

Likewise, plaintiff's cross-motion for sanctions as against defendants, is denied. In support of the cross-motion, plaintiff argues that sanctions against defendants are appropriate for their failure to file a notice of pendency or otherwise inform the parties and the court of the existence of litigation related to ownership of the property abutting the sidewalk where plaintiff's alleged incident occurred. Notably, plaintiff does not posit any arguments with respect to the City, since the City had no involvement in that separate litigation. The gravamen of plaintiff's argument is that defendants should have disclosed the separate pending litigation and appeals related to ownership of the subject property.

To impose sanctions, plaintiff would have to demonstrate with a "clear showing" that defendants acted willfully in bad faith. To make such a showing, there would have to be evidence of outward attempts to withhold or conceal discoverable information that prejudiced plaintiff in its absence. No such evidence of willful action has been proffered here, thus necessitating denial of plaintiff's cross-motion for sanctions as against defendants.

Finally, plaintiff's request that the court grant plaintiff permission to institute an action against 101 West 136th Street Realty Corp. is denied, without prejudice to plaintiff re-filing a new action against 101 West 136th Street Realty Corp. and seeking to argue therein that the new action can proceed by way of invocation of the savings clause contained in CPLR §205(a). Since plaintiff, to date, has not filed a second action or moved to amend an existing pleading to add 101 West 136th Street Realty Corp., consideration of the relief sought by plaintiff herein is not ripe for deliberation by this court, but may be appropriate once a new action is filed. CPLR §205(a) is the saving provision for a plaintiff whose action has been dismissed without reaching the merits. If the original statute of limitations has expired by the time the action is dismissed, CPLR §205(a) allows the plaintiff a fresh six months for a new action, measured from a "non-merits" dismissal. "The six-month period in CPLR §205(a) is not a limitations period but a tolling provision, which has no application where ... the statute of limitations has not expired at the time the second action is commenced" (*Bonilla v. Tutor Perini, Corp*., 134 AD3d 869, 870 [2d Dept 2015]). The statute has a batch of very specific exceptions; by express statutory language, CPLR §205(a) does not apply when: (1) the termination of the initial action was by voluntary discontinuance; (2) the termination was a dismissal due to the failure to obtain personal jurisdiction over the defendant or due to the neglect of the plaintiff to prosecute the action; or (3) the termination was a final judgment on the merits of the case. Basically, the statute is intended to grant a six-month grace period to commence a new and proper action, when it had originally been timely commenced but was dismissed due to a technical defect that can be remedied in the new action (*see 78 U.S. Bank N.A. v. DLJ Mtge. Capital, Inc*., 33 NY3d 72, 78 [2019]). Importantly, the Court of Appeals has also "note[d] that the benefit provided by the section is explicitly, and exclusively, bestowed on the plaintiff' who prosecuted the initial action" (*Reliance Insurance Co. v. PolyVision Corp*., 9 NY3d 52, 57 [2007]).

Whether or not plaintiff here may have grounds to invoke CPLR §205(a) is not a question for this court to presently determine. To be sure, 101 West 136th Street is not a party to the present action, and it would be procedurally improper for this court to permit a filing as against them without 101 West 136th Street Realty Corp. being afforded an opportunity to respond. Rather, what would be more appropriate here would be for plaintiff, upon filing a new appropriate action and application naming 101 West 136th Street Realty Corp., to invoke CPLR §205(a)'s savings provision to allow that separate action to potentially proceed as against 101 West 136th Street Realty Corp. Accordingly, that branch of plaintiff's cross-motion is denied, without prejudice to plaintiff re-filing a new action against 101 West 136th Street Realty Corp. and seeking to argue therein that the new action can proceed by way of invocation of the savings clause contained in CPLR §205(a).

Based on the foregoing, it is hereby

ORDERED that Lampkin's motion is granted to the extent that summary judgment is awarded and all claims and cross-claims asserted by as against Lampkin are dismissed in their entirety; and it is further

ORDERED Watson's motion is granted to the extent that summary judgment is awarded and all claims and cross-claims asserted by as against Watson are dismissed in their entirety; and it is further

ORDERED that One 9's motion is granted to the extent that summary judgment is awarded and all claims and cross-claims asserted by as against One 9 are dismissed in their entirety; and it is further

ORDERED that One 9's motion for sanctions is denied; and it is further

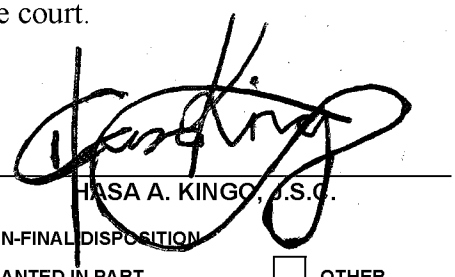
ORDERED that plaintiff's cross-motion for sanctions is denied; and it is further

ORDERED that the branch of plaintiff's cross-motion requesting that this court grant plaintiff permission to institute an action against 101 West 136th Street Realty Corp. is denied, without prejudice to plaintiff re-filing a new action against 101 West 136th Street Realty Corp. and seeking to argue therein that the new action can proceed by way of invocation of the savings clause contained in CPLR §205(a); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment dismissing the complaint as against Lampkin, Watson, and One 9; and it is further

ORDERED that the oral argument, previously scheduled for April 23, 2024, is vacated on account of this court's instant decision.

This constitutes the amended decision and order of the court.



4/12/2024
DATE

HASA A. KINGO, J.S.C.

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| APPLICATION: | [ ] | SETTLE ORDER | | [ ] | SUBMIT ORDER | | |
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