

Dorland v Croman

2012 NY Slip Op 33233(U)

October 3, 2012

Sup Ct, New York County

Docket Number: 103607/10

Judge: Barbara Jaffe

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JAFFE
Justice

PART 5

Index Number : 103607/2010
DORLAND, BONITA
vs.
CROMAN, STEVEN
SEQUENCE NUMBER : 001
DISMISS CAL. #29

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). 1
Answering Affidavits — Exhibits _____ | No(s). 23
Replying Affidavits _____ | No(s). 4

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

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

OCT 09 2012

NEW YORK
COUNTY CLERKS OFFICE

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

Dated: 10/3/12
OCT 03 2012

[Signature], J.S.C.
BARBARA JAFFE
J.S.C.

- 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
BONITA DORLAND,

Index No. 103607/10

Plaintiff,

Argued: 5/29/12

-against-

Motion seq. no.: 001

DECISION AND ORDER

STEVEN CROMAN, HARRIET CROMAN, EDWARD
CROMAN, CROMAN REAL ESTATE, INC., and
THE CITY OF NEW YORK,

Defendants.

-----X
BARBARA JAFFE, JSC:

FILED

OCT 09 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

For plaintiff:

Gregory P. Haegele, Esq.
Law Office of Steven Smedresman, P.C.
41 Madison Ave., 40th Fl.
New York, NY 10010
212-267-1950

For City:

Michael Nacchio, ACC
Michael A. Cardozo
Corporation Counsel
100 Church St.
New York, NY 10007
212-788-0627

For Croman defendants:

James V. Sawicki, Esq.
Gannon Rosenfarb *et al.*
100 William St., 7th Fl.
New York, NY 10038
212-655-5000

By notice of motion dated January 31, 2012, defendant City moves pursuant to CPLR 3211(a)(7) and/or 3212 for an order summarily dismissing the complaint and any cross claims against it. Plaintiff and defendants Steven Croman, Harriet Croman, Edward Croman, and Croman Real Estate, Inc. oppose.

In her notice of claim served on City on May 13, 2009, plaintiff alleges that on April 10, 2009, she tripped and fell on the sidewalk in front of 12A E. 72nd Street in Manhattan (the premises), and that:

the incident occurred at an area of sidewalk directly adjacent to the curb, approximately 3 feet east of the northeast corner of a rectangle formed by a tree planter cutout in the sidewalk directly in front of said premises, when the claimant was precipitated violently to the ground when her foot became wedged in a dangerous crack in the sidewalk at the location described . . . The crack was between 1 and 2 inches wide and approximately 30 inches long running along the length of the curb/sidewalk transition.

(Affirmation of Michael Nacchio, ACC, dated Jan. 31, 2012 [Nacchio Aff.], Exh. A).

In plaintiff's complaint dated March 18, 2010, plaintiff again alleges that she fell on the sidewalk and curb in front of the premises. A Big Apple Map (Map) annexed to the complaint reflects an "extended section of broken, misaligned, or uneven curb" in front of the premises. (*Id.*, Exh. B).

At a 50-h hearing held on October 29, 2009, plaintiff testified, as pertinent here, that the defect which caused her fall was located in an area between the curbstone and a space between two sidewalk flags. Pictures taken of the location reflect a large crack or area of eroded concrete located at the intersection of the curbstone and two sidewalk flags, with the crack/erosion extending into both the curb and the flags. (*Id.*, Exh. E).

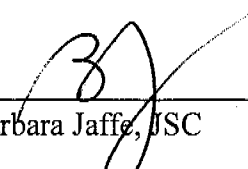
While City argues that it may not be held liable to plaintiff as it was not responsible for maintaining the sidewalk in front of the premises, plaintiff's testimony and photographs show that the defect at issue extended into both the sidewalk and the abutting curbstone, and City may be held liable for a defect on a curb. (Administrative Code § 19-101[d] [definition of sidewalk does not include curb]; *Alleyne v City of New York*, 89 AD3d 970 [2d Dept 2012] [City may be held liable for defective condition on curb]; *Garris v City of New York*, 65 AD3d 953 [1st Dept 2009] [as property owner not obligated to maintain curb, it was not liable to plaintiff]).

Moreover, the Map reflects the existence of a broken or uneven curb in front of the premises, which constitutes prior written notice to City. (*Burwell v City of New York*, 97 AD3d 617 [2d Dept 2012]; *Puella v City of New York*, 90 AD3d 529 [1st Dept 2011]).

Thus, City has failed to demonstrate, *prima facie*, that it may not be held liable to plaintiff here. Accordingly, it is hereby

ORDERED, that defendant City of New York's motion to dismiss is denied.

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: October 3, 2012
New York, New York

OCT 03 2012

FILED
OCT 09 2012
NEW YORK
COUNTY CLERK'S OFFICE