Font v Lopez
2018 NY Slip Op 32108(U)
July 20, 2018
Supreme Court, Richmond County
Docket Number: 150769/2017
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C-2
---X
AMERICA FONT,

Plaintiff,

DECISION AND ORDER

-against -

Index No. 150769/2017

RICARDO LOPEZ SR., ROSARIO LOPEZ and CITY OF NEW YORK,

Motion No: 1352-001

Defendants.
---X

The following papers numbered 1 and 2 were fully submitted on the 6th day of June 2018:

	Papers Numbered
Defendant Lopez' Notice of Motion, Affirmation and Exhibits (Dated: March 15, 2018)	1
Plaintiff's Affirmation in Opposition (Dated: May 30, 2018)	2

Upon the foregoing papers, the motion of the defendants Ricardo Lopez Sr., and Rosario Lopez[1] (hereinafter "Lopez") for summary judgment dismissing the complaint and all cross claims insofar as asserted against them is granted.

This matter arises out of a trip and fall that occurred on November 22, 2016 on the sidewalk in front of the premises known as 330 Milton Avenue, Staten Island, New York. Plaintiff claims to have sustained extensive personal injuries inclusive of a fractured right elbow when she was caused to trip on a "...dangerous, dilapidated, broken, raised, depressed, cracked

[1] Plaintiff discontinued her action against defendant, The City of New York, on or about July 27, 2017. The fully executed "Stipulation of Discontinuance with Prejudice" was filed with the Richmond County Clerk on May 14, 2018.

and uneven" sidewalk (*see* Verified Bill of Particulars and photographs of alleged accident site, Defendants' Exhibits E and F). It appears that plaintiff tripped on the height differential between sidewalk flags abutting Lopez' property. It is undisputed that Lopez owns and occupies the one family semi-attached residence abutting the subject sidewalk, *i.e.,* 330 Milton Avenue, Staten Island, New York.

Lopez moves for judgment dismissing the complaint on the grounds that Administrative Code of the City of New York §7-210 insulates them from liability inasmuch as they are "owners of a one-family residential real property that is (i) in whole or in part owner occupied, and (ii) used exclusively for residential purposes" (Administrative Code of City of N.Y. §7-210[b]), and further, that they neither created the allegedly defective condition, made negligent repairs to the sidewalk, nor caused the condition to occur through special use.

Plaintiff opposes the motion asserting that there is an issue of fact as to whether the property is used "exclusively for residential purposes" inasmuch as Ricardo Lopez, Sr. cites this address for annual renewal of his taxi medallion with the New York City Taxi and Limousine Commission, and for annual payment of income taxes (see Testimony of Ricardo Lopez, pp 12-18, Defendants' Exhibit G).

As previously indicated, defendants' motion for summary judgment dismissing the complaint and cross claims is granted.

Pursuant to New York City Administrative Code §7-210, the owner of real property abutting a sidewalk has the duty of maintaining it in a reasonably safe condition, and is liable for any personal injury proximately caused by its failure to so maintain the sidewalk, unless the property is exempt, *i.e.,* the property is a "one-, two-or three-family residential property that is

(i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes" (Administrative Code of the City of New York, §7-210[b]). The statutory language recognizes that it "was inappropriate to expose small-property owners in residence, who have limited resources, to exclusive liability with respect to sidewalk maintenance and repair" (*Johnston v. Manley,* 150 AD3d 1210, 1211 [2d Dept. 2017], *quoting Coogan v. City of New York,* 73 AD3d 613 [1st Dept. 2010], *internal quotations omitted*).

Here, defendants have sufficiently established through, *e.g.*, their deposition testimony, deed to the premises, and records from the New York City Department of Buildings (see Defendants' Exhibits I and J), that they are the sole owners of the subject property, which they use solely for residential purposes, and that they neither performed work nor hired anyone to make repairs at the subject location. Accordingly, Lopez have established *prima facie* that they are exempt from liability under the Administrative Code. In opposition, the plaintiff has failed to submit any evidence to rebut the foregoing or otherwise raise an issue of fact (*see Zuckerman. v. City of New York,* 49 NY2d 557, 562).

Plaintiff's argument that the property is not being "used exclusively for residential purposes" is without merit. The Court finds Lopez' use of his home address for receipt of mail from the NYC Taxi and Limousine Commission is "merely incidental" to his use of the property and does not prevent the exemption under Administrative Code §7-210 from applying (*see DeBlasi v. City of New York,* 157 AD3d 656 [2d Dept. 2018]; *Koronkevich v. Dembitzer,* 147 AD3d 916 [2nd Dept. 2017]; and *Coogan v. City of New York,* 73 AD3d 613 [1st Dept. 2010]).

Based upon the foregoing, it is

ORDERED, that the motion for summary judgment of defendants Ricardo Lopez Sr., and Rosario Lopez is granted; and it is further

ORDERED, that the Clerk enter judgment in favor of defendants dismissing the complaint.

ENTER,

Dated: July 26, 2018

HON. THOMAS P. ALIOTTA, J.S.C.