To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LISA DEGEN,

Plaintiff,

-against-

JOHN N. DEL BELLO, JR. and HOLLY DEL BELLO,

Defendants.

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DECISION & ORDER

Index No.: 57391/2018
Sequence No. 1

WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 8-26, were read in connection with Defendants' motion for summary judgment.

Pedestrian seeks to recover damages for injuries she allegedly sustained when on August 9, 2017, at approximately 8:30AM, she allegedly slipped and fell on the sidewalk in front of 204 Purchase Street in Rye.

Based on the foregoing, the motion is decided as follows:

It is well settled that "a 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" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; see Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; see also Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see Zuckerman v New York, 49 NY2d 557, 562 [1980]; see also Khan v Nelson, 68 AD3d

1062 [2d Dept 2009]). Conclusory, unsubstantiated assertions will not suffice to defeat a motion for summary judgment (Barclays Bank of New York, N.A. v Sokol, 128 AD2d 492 [2d Dept 1987]). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; see Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). The court must accept as true the evidence presented by the nonmoving party and must deny the motion if there is "even arguably any doubt as to the existence of a triable issue" (Kolivas v Kirchoff, 14 AD3d 493 [2d Dept 2005]); Baker v Briarcliff School Dist., 205 AD2d 652,661-662 [2d Dept 1994]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320,324 [1986]).

At the time of the accident, defendant John N. Del Bello, Jr. ("defendant") was the owner of the subject premises, that has four apartments, which was purchased as and continues to be rental property. Through his affidavit, he attests that at no time prior to the accident was he directed by the City of Rye to repair the sidewalk in front of the property.

Generally, "liability for injuries sustained as a result of negligent maintenance of or the existence of dangerous or defective conditions to public sidewalks is placed on the municipality and not the abutting landowner. (Morelli v Starbucks Corp., 107 AD3d 963, 964 [2d Dept 2013]). "However, liability can be imposed on an abutting landowner where the sidewalk was constructed in a special manner for the benefit of the abutting landowner, where the abutting landowner affirmatively caused the defect, where the abutting landowner negligently constructed or repaired the sidewalk, or where a local ordinance or statute specifically charges an abutting

landowner with a duty to maintain and repair the sidewalk and imposes liability for injuries flowing from a breach of that duty" (Sammarco v City of New York, 16 AD3d 657, 658 [2d Dept 2005]).

Here, the City of Rye Ordinance provides that:

"A. It shall be the duty of the Department of Public Works to require the owner of property abutting upon a street to repair or replace any sidewalk in front thereof that is required to be repaired or replaced. Where the owner of such property shall fail to neglect to repair or replace such sidewalk for five days after notice to do so has been served upon the owner, either personally or by mailing the same to the name of the last known owner thereof as the same appears on the assessment roll of the City of Rye for the last calendar year, the Department of Public Works shall repair or replace such sidewalk, and a statement for 100% of the cost incurred thereby shall be served upon the owner, either personally or by mailing the same to the name of the last known owner thereof as the same appears on said assessment roll. If the owner of the property shall fail to pay the same within 15 days after demand, the City Assessor shall, in the preparation of the next assessment roll, assess such amount upon such property, and the same shall be levied, collected and enforced in the same manner as taxes upon said property for City purposes are levied, collected and enforced.

B. In the event that personal injury or property damage shall result from the failure of any owner or other responsible person to comply with the provisions of this section and § 167-47 above, the owner and such other person shall be liable to all persons injured, or whose property is damaged directly or indirectly thereby, and shall be liable to the City to the extent that said City is required by law or by any court to respond in damages to any injured party" (City Ordinance, NYSCEF Doc No. 17).

In support of their motion, defendants demonstrated, prima facie, that there was no ordinance or statute placing an obligation on them to maintain the sidewalk abutting the subject property at the time of the subject accident; and they offered evidence that none of the elements which are necessary to impose liability upon an abutting landowner were present, including through defendant's testimony that he never made repairs to the sidewalk, and the City of Rye's Department of Public Works never notified them to make such repairs.

In opposition, plaintiff failed to raise a triable issue of fact, including plaintiff's speculation that the sidewalk may not be a public sidewalk. Additionally, the photograph which

plaintiff submitted in opposition to the motion, failed to show that there was any special use of the sidewalk that contributed to the alleged defect (Jackson v Thomas, 35 AD3d 666, 666–68 [2d Dept 2006]).

Finally, the parties' depositions were conducted, and plaintiff's "mere hope that evidence sufficient to defeat the motion may be uncovered during the discovery process" is insufficient to defeat summary judgment (Jackson v Thomas, 35 AD3d 666, 667).

The court has considered the remainder of the factual and legal contentions of the parties, and to the extent not specifically addressed herein, finds them to be either without merit or rendered moot by other aspects of this Decision and Order. This constitutes the Decision and Order of the Court.

Accordingly, for the stated reasons it is hereby:

ORDERED, that defendants' motion for summary judgment is granted, and the Complaint is dismissed.

The Clerk shall mark his records accordingly.

Dated: February 4, 2020
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF