Greene v Iqbal
2021 NY Slip Op 33419(U)
December 28, 2020
Supreme Court, Nassau County
Docket Number: Index No. 609692/19
Judge: Leonard D. Steinman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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ROBERT GREENE,

Plaintiff,

IAS Part 12
Index No. 609692/19
Mot. Seq. No. 001

-against-

DECISION AND ORDER

SONIA IQBAL,

Defendant.

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LEONARD D. STEINMAN, J.

The following papers, in addition to any memoranda of law, were reviewed in preparing this Decision and Order:

Defendant's Notice of Motion, Affirmation & Exhibits 1
Plaintiff's Affirmation in Opposition, Affidavit & Exhibits..... .2
Defendant's Reply Affirmation..... ...3

This is an action for personal injuries allegedly sustained by plaintiff Robert Greene in March of 2019 when he tripped and fell on a raised/uneven portion of the sidewalk adjacent to the premises located at 209 East Meadow Avenue, East Meadow, New York. The premises abutting the sidewalk is owned by defendant Sonia Iqbal. In his Verified Complaint, Greene claims that Iqbal, among other things: negligently, carelessly and recklessly maintained the sidewalk and caused or created the condition that caused Green's accident. Iqbal now moves to dismiss the complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7) and for summary judgment pursuant to CPLR 3212.

Iqbal's Affirmation and Memorandum of Law are both silent as to the basis for the dismissal request pursuant to CPLR 3211. In all events, the facts set forth in the Verified Complaint establish a cognizable legal theory of liability. Therefore, the below analysis is restricted to that branch of Iqbal's motion made pursuant to CPLR 3212 and, for the reasons set forth below, summary judgment is granted.

BACKGROUND

Greene testified at his deposition he was walking for exercise when he tripped and fell on a portion of the sidewalk that was raised approximately 3 inches in height. The area of the sidewalk where Greene fell was adjacent to Iqbal's driveway apron and was abutting a "large" tree.

Iqbal testified that the large tree identified by Greene was present when she purchased the property, approximately 12 years prior to this accident. The Town of Hempstead cut down other trees along the sidewalk over the years. According to Iqbal, the portion of the sidewalk where Greene fell was raised when she purchased the property and became increasingly uneven over time due to the growing tree roots. Iqbal never performed any construction or repairs to the sidewalk.

LEGAL ANALYSIS

Iqbal contends that she cannot be held liable for Greene's accident because she did not create the condition that caused Greene's fall and did not make special use of the sidewalk abutting her property.

On a motion for summary judgment the proponent must tender sufficient evidence to demonstrate the absence of any material issues of fact in order to set forth a *prima facie* showing that it is entitled to judgment as a matter of law. *Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72, 81 (2003). Where the movant fails to meet its initial burden the motion for summary judgment should be denied. *U.S. Bank N.A. v. Weinman*, 123 A.D.3d 1108 (2d Dept. 2014).

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfgrs., Inc.*, 46 N.Y.2d 1065 (1979); *Werner v. Nelkin*, 206 A.D.2d 422 (2d Dept. 1994).

As a general rule, a landowner will not be liable to a pedestrian injured by a defect in a public sidewalk abutting the landowner's premises unless "the landowner created the defective condition or caused the defect to occur because of some special use...." *Bloch v. Potter*, 204 A.D.2d 672 (2d Dept. 1994), *quoting Surowiec v. City of New York*, 139 A.D.2d 727 (2d Dept. 1988); *see also Maya v. Town of Hempstead*, 127 A.D.3d 1146 (2d Dept. 2015).

Liability may also be imposed if the landowner violated a statute or an ordinance placing upon the owner or lessee the obligation to maintain the sidewalk. *Lowenthal v. Theodore H. Heidrich Realty Corp.*, 304 A.D.2d 725 (2d Dept. 2003); *see also Hausser v. Giunta*, 88 N.Y.2d 449 (1996). However, "[i]n order for a statute, ordinance, or municipal charter to impose liability upon an abutting owner for injuries caused by its negligence, the language thereof must not only charge the landowner with a duty, it must also specifically state that if the landowner breaches that duty he or she will be liable to those who are injured." *Picone v. Schlaich*, 245 A.D.2d 555, 556 (2d Dept. 1997); *see also Dalder v. Incorporated Vil. of Rockville Ctr.,* 116 A.D.3d 908 (2d Dept. 2014) (granting defendant summary judgment where the Code of the Village of Rockville Centre imposed a duty on the defendant to keep the abutting sidewalk in good and safe repair, but did not impose tort liability upon the defendant for injuries caused by a violation of that duty); *Romano v. Leger*, 72 A.D.3d 1059 (2d Dept. 2010) (village code required property owner to pay for repairs of sidewalk but did not shift tort liability to landowner; summary judgment granted).

Here, Iqbal made a *prima facie* showing of entitlement to summary judgment that she neither created the condition nor made special use of the sidewalk where Greene fell. In opposition, Greene argues that Iqbal's ordinary use of her driveway—driving over the driveway apron and parking cars in the driveway—constitutes a special use that caused the subject condition. But this argument is misplaced and based solely on speculation. Importantly, the condition that caused Greene's fall is not on the driveway apron but on the slab of sidewalk adjacent to it. Greene proffers no evidence to support the contention that driving over the driveway apron "depressed" the pavement or "enhanced" the mis-leveling of the sidewalk. From the photographs proffered and the testimony provided, it is apparent that

the sidewalk slab was raised due to the tree roots of the abutting "large tree." Green submits no evidence to create an issue of fact with respect to the cause of the condition.

Additionally, while the Town of Hempstead imposes a duty upon landowners to maintain an abutting sidewalk, it does not expressly impose liability for injuries that incurred for defects in the sidewalk. *Town of Hempstead Code* §181-11; *See also Maya v. Town of Hempstead*, 127 A.D.3d 1146 (2d Dept. 2015).

Based on the foregoing, defendant's application for summary judgment pursuant to CPLR 3212 is granted and the complaint is dismissed

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this court.

Dated: December 28, 2020
Sea Cliff, New York

ENTERED
Jan 15 2021
NASSAU COUNTY
COUNTY CLERK'S OFFICE

ENTER:

LEONARD D. STEINMAN, J.S.C.
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