At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 30th day of August 2023

HONORABLE FRANCOIS A. RIVERA

----------X

RAFAEL DOMINGUEZ,

Plaintiff,

- against -

BLEV REALTY LLC, CYA MANAGEMENT LLC, and MGSA V LLC,

Defendants.

----------X

DECISION & ORDER
Index No.: 524544 /2021

By notice of motion filed on March 20, 2023, under motion sequence number one, Rafael Dominguez (hereinafter the plaintiff), seeks an order pursuant to CPLR 3212 granting summary judgment in his favor on the issue of liability as against defendants Blev Realty LLC, CYA Management LLC, and MGSA V LLC (hereinafter the defendants). The defendants jointly opposed the motion.

BACKGROUND

On September 28, 2021, the plaintiff commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office (KCCO). On October 22, 2021, the defendants joined issue by interposing and filing a joint verified answer with the KCCO.

The verified complaint alleges the following salient facts. On February 24, 2021, the plaintiff was lawfully walking on the sidewalk in front of the subject property located in Bronx County, in the State of New York. The subject property abutting the sidewalk was, inter alia, owned, operated, and managed by the defendants. Based on the defendants'

failure to keep the sidewalk in front of the subject property in a reasonably safe condition, the plaintiff was caused to fall due to an allegedly dangerous and defective condition on the sidewalk. The fall caused the plaintiff to sustain physical injuries.

LAW AND APPLICATION

On a motion for summary judgment, the movant must establish his or her cause of action or defense sufficient to warrant a court to direct judgment in his or her favor as a matter of law (*Alvarez v Prospect Hospital,* 68 NY2d 320 [1986]). If the movant meets this burden, the party opposing the motion must then produce proof in admissible form sufficient to necessitate a trial as to material issues of fact (*Laecca v New York University*, 7 AD3d 415 [1st Dept 2004]). Furthermore, to grant a motion for summary judgment, it must clearly appear that no material issue of fact is presented. The burden upon the court when deciding this type of motion is not to resolve issues of fact or credibility, but rather to determine whether indeed any such issue of fact exist (*Barr v County of Albany*, 50 NY2d [1960]).

Administrative Code of the City of New York § 7–210, which became effective in 2003, shifted tort liability for injuries arising from a defective sidewalk from the City to the abutting property owner, except for sidewalks abutting one-, two-, or three-family residential properties that are owner occupied and used exclusively for residential purpose (*Zorin v City of New York*, 137 AD3d 1116, 1118 [2016]).

Even in those instances where the abutting property is within the ambit of the Administrative Code § 7–210, the abutting property owner is not subject to strict liability. The injured party has the obligation to prove the elements of negligence to demonstrate that

an owner is liable (*Muhammad v. St. Rose of Limas R.C. Church*, 163 A.D.3d 693, 693 [2nd Dept 2018], *citing Gyokchyan v. City of New York*, 106 A.D.3d 780 at 781[2 Dept 2013]). Therefore, to impose liability upon a defendant in a trip-and-fall action, there must be evidence that a dangerous or defective condition existed, and that the defendant either created the condition or had actual or constructive notice of it (*Starling v Suffolk County Water Authority*, 63 AD3d 822 [2d Dept 2009]). Whether a dangerous or defective condition exists on the property of another to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury (*Trincere v Cnty. of Suffolk*, 90 NY2d 976, 977 [1997]). A defendant has constructive notice of a defect when the defect is visible and apparent and has existed for a sufficient length of time before the accident that it reasonably could have been discovered and corrected (*Paraskevopoulos v. Voun Corp.*, 216 A.D.3d 983, 984 [2nd Dept 2023]).

Pursuant to CPLR 4532-a, the plaintiff submitted google photograph images taken on July 2018, September 2018 and August 2019 purportedly showing the dangerous and defective condition of the sidewalk in front of the defendants' property where the plaintiff claims he fell. Each photograph, however, contained a New York City public streetlight and a United States Post Office mailbox obstructing the view of the alleged sidewalk condition. The evidentiary submission of the plaintiff did not make a prima facie showing that the allegedly defective condition of the sidewalk in front of the defendants' property was dangerous or defective as a matter of law. It therefore remains an issue for the trier of fact. Nor did it establish that the defendants had constructive notice of the allegedly dangerous

condition. The plaintiff's motion is therefore denied without regard to the sufficiency of the defendants' opposition papers (*Winegrad v New York Univ. Med. Cntr*, 64 NY2d 851 [1985]).

CONCLUSION

The motion by plaintiff Rafael Dominguez for an order pursuant to CPLR 3212 granting summary judgment in his favor on the issue of liability as against defendants Blev Realty LLC, CYA Management LLC, and MGSA V LLC is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francois A. Rivera
J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.