

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25238
G/kmg

_____AD3d_____

Argued - October 30, 2009

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2008-08233

DECISION & ORDER

Jacob Braun, et al., appellants, v Joan Weissman,
et al., respondents.

(Index No. 102701/07)

Schwartz Goldstone & Campisi, LLP (Annette G. Hasapidis, South Salem, N.Y., of counsel), for appellants.

Gannon, Rosenfarb & Moskowitz, New York, N.Y. (David A. Drossman of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (Minardo, J.), dated July 14, 2008, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

The injured plaintiff allegedly slipped and fell on ice on a sidewalk abutting the defendants' property. The injured plaintiff and his wife, suing derivatively, commenced this action against the defendants. The defendants moved for summary judgment dismissing the complaint, contending that they did not create the alleged icy condition by negligently performing snow removal. The Supreme Court granted the motion. We reverse.

An owner of property abutting a public sidewalk is under no duty to pedestrians to "remove snow and ice that naturally accumulates upon the sidewalk unless a statute or ordinance specifically imposes tort liability for failing to do so" (*Bruzzo v County of Nassau*, 50 AD3d 720, 721;

December 8, 2009

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see Crudo v City of New York, 42 AD3d 479, 480; *Wu Zhou Wu v Korea Shuttle Express Corp.*, 23 AD3d 376, 377; *Negron v G.R.A. Realty*, 307 AD2d 282). In the absence of such a statute or ordinance, the owner can be held liable only if he or she, or someone on his or her behalf, “undertook snow and ice removal efforts which made the naturally-occurring conditions more hazardous” (*Robles v City of New York*, 56 AD3d 647, 647 [internal quotation marks omitted]; *see Bruzzo v County of Nassau*, 50 AD3d at 721; *Martinez v City of New York*, 20 AD3d 513).

Here, since the defendants and their children lived in the premises, a one-family house, the premises were exempt from liability imposed pursuant to Administrative Code of the City of New York § 7-210(b) for negligent failure to remove snow and ice from the sidewalk. Nevertheless, the defendants, as movants, failed to establish, prima facie, that their snow removal work did not create the alleged icy condition. Under the circumstances, a triable issue of fact exists as to whether the ice upon which the injured plaintiff slipped was formed when snow piles created by the defendants’ snow removal efforts melted and refroze (*see Keese v Imperial Gardens Assoc., LLC*, 36 AD3d 666, 667-678; *Caro v Skyline Terrace Coop.*, 132 AD2d 512, 513; *see also Smith v County of Orange*, 51 AD3d 1006; *Ricca v Ahmad*, 40 AD3d 728; *Knee v Trump Vil. Constr. Corp.*, 15 AD3d 545).

SKELOS, J.P., ENG, AUSTIN and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court