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

D27714
C/hu

_____AD3d_____ Argued - May 14, 2010

WILLIAM F. MASTRO, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-10223 DECISION & ORDER

Yecheskel Schwartz, et al., plaintiffs-respondents, v City of New York, defendant third-party plaintiff-respondent; 307 Hewes Street Realty Corp., et al., defendants third-party defendants-appellants.

(Index No. 30763/07)

Rebore, Thorpe & Pisarello, P.C., Farmingdale, N.Y. (William J. Pisarello and Michelle S. Russo of counsel), for defendants third-party defendants-appellants.

Annette G. Hasapidis, South Salem, N.Y., for plaintiffs-respondents.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Elizabeth I. Freedman of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, etc., the defendants third-party defendants, 307 Hewes Street Realty Corp., Ben Zion Jacobowitz, and Toby Jacobowitz, appeal from an order of the Supreme Court, Kings County (Hurkin-Torres, J.), dated October 9, 2009, which denied that branch of their motion which was for summary judgment dismissing the amended complaint insofar as asserted against them and, in effect, denied those branches of their motion which were for summary judgment dismissing all cross claims insofar as asserted against them and dismissing the third-party complaint.

ORDERED that the order is reversed, on the law, with one bill of costs payable by the respondents appearing separately and filing separate briefs, and the motion of the defendants third-party defendants for summary judgment dismissing the amended complaint and all cross claims insofar as asserted against them and dismissing the third-party complaint, is granted.

The injured plaintiff and his wife, suing derivatively, commenced this action to recover damages for personal injuries allegedly sustained by the injured plaintiff when he slipped and fell on a sidewalk abutting the appellants' property. The appellants moved for summary judgment dismissing the amended complaint and all cross claims insofar as asserted against them, as well as the third-party complaint, on the ground that their property was exempt from liability imposed pursuant to Administrative Code of the City of New York § 7-210(b) for failure to maintain the sidewalk in a reasonably safe condition. The Supreme Court denied that branch of the motion which was for summary judgment dismissing the amended complaint insofar as asserted against them and, in effect, denied those branches of their motion which were for summary judgment dismissing all cross claims insofar as asserted against them and dismissing the third-party complaint. We reverse the order of the Supreme Court and grant the motion.

The appellants established their prima facie entitlement to judgment as a matter of law by demonstrating that the certificate of occupancy for the subject property permitted three families to reside there, and that the property was owner- occupied and used exclusively for residential purposes (*see* Administrative Code of City of NY § 7-210[b]). Thus, the appellants established, prima facie, that the property was exempt from liability imposed pursuant to Administrative Code of City of New York § 7-210(b). In opposition, the plaintiffs and the defendant third-party plaintiff, City of New York, failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.,* 68 NY2d 320, 324). Accordingly, the Supreme Court should have granted the appellants' motion for summary judgment dismissing the amended complaint and all cross claims insofar as asserted against them and dismissing the third-party complaint.

MASTRO, J.P., ENG, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court