

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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JUDITH RODRIGUES,

Plaintiff,

Index No.: 3263/07

Motion Dated:
November 12, 2008

-against-

BRAZAL SOUTH HOLDINGS, LLC.,

Cal. No.: 16

Defendant.

M# 1

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The following papers numbered 1 to 10 read on this motion by the defendant for summary judgment.

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion - Affidavits - Exhibits.....	1 - 4
Affirmation in Opposition - Exhibits	5 - 7
Replying Affirmation	8 - 10

Upon the foregoing papers it is ordered that this motion by defendant for summary judgment is decided as follows:

Plaintiff allegedly sustained serious injuries when she tripped and fell near the corner of 27-26 Bridge Plaza South in Queens County on October 27, 2006. According to plaintiff, her accident occurred after the heel of her shoe stepped into a hole, and the front portion of her foot came into contact with a metal bar. The defendant is the abutting landowner. Plaintiff commenced the instant action seeking to recover damages for negligence. The instant motion for summary judgment ensued.

In support of the motion for summary judgment, defendant asserts that the hole which plaintiff allegedly stepped into is part of the curbstone, not the sidewalk. Defendant argues that under section 7-210 of the Administrative Code of the City of New York ("Administrative Code"), the curbstone is the responsibility of the City of New York and not the abutting landowner. Defendant also maintains that it did not cause the defect in the curbstone, make any repairs to the curbstone or make special use of the curbstone.

In opposition to the motion, plaintiff contends that under the revised section 7-210 of the Administrative Code, liability for defects in sidewalk, crosswalks and curbs was shifted to the abutting landowner. Plaintiff argues that the curbstone is the edge of the sidewalk for which the abutting landowner is responsible. Plaintiff notes that the legislative intent in enacting section 7-210 of the Administrative Code was to exclude liability of the City of New York and to impose it on the abutting property owner.

It is well settled that an abutting landowner can be held liable to a pedestrian injured by a defect on the sidewalk if the landowner created the defect, voluntarily but negligently made repairs, caused the defect to occur by special use or breached a specific ordinance or statute which obligates the owner to maintain the sidewalk. (Hausser v Giunta, 88 NY2d 449, 453 [1996]; Berkowitz v Spring Creek, Inc., 56 AD3d 594 [2008]; Campos v Midway Cabinets, Inc., 51 AD3d 843, 843 [2008].) Prior to September 14, 2003, the City of New York was generally liable to pedestrians for injuries caused by defective sidewalk flags.

Effective September 14, 2003, the New York City Council enacted section 7-210 of the Administrative Code which dramatically changed the tort liability laws for sidewalk conditions in the City of New York. Administrative Code § 7-210(a) provides that “[i]t shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain the sidewalk in a reasonably safe condition.” Further, Administrative Code § 7-210(b) provides that the owner of real property, abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury ... caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags ...” These provisions do not apply to the owners of one, two or three family residential real property that is in whole or in part, owner occupied, and used exclusively for residential purposes. (Administrative Code § 7-210 [c].)

The purpose of amending section 7-210 was, in part, to reduce the tort liability payments of the City of New York by shifting the responsibility for sidewalk accidents from the City of New York to abutting property owners. (Clark, Cosgrove,

Outside Counsel, Sidewalk Liability is transferred from New York City to Landlords, NYLJ, Sept. 11, 2003, at 4, col 5; see Puello v City of New York, 35 AD3d 294, 294 [2006].) The City Council hoped to place liability for sidewalk accidents on the "party whose legal obligation it is to maintain and repair sidewalks that abut them - the property owners." (Rep of Comm on Transp, 2003 NYC, N.Y. Local Law Report No. 49, Int. 193.)

The issue herein is whether the curbstone is part of the sidewalk, which would make it the responsibility of the defendant. Although "sidewalk" is not defined in section 7-210 of the Administrative Code, section 7-201 (c)(1)(b) states that a sidewalk "shall include a boardwalk, underpass, pedestrian walk or path, step or stairway." No mention is made of a "curbstone." Moreover, Section 7-201 (c)(1)(a) of the Administrative Code provides, in pertinent part, that "[t]he term 'street' shall include the curbstone..."

Reference to other parts of the Code is helpful in determining whether a sidewalk should include the curbstone. In a report prepared by the New York City Council's Committee on Transportation prior to the enactment of section 7-210, it was noted that 7-210 mirrors the duties and obligations of property owners set forth in section 19-152 of the Code. (Rep of Comm on Transp, 2003 NYC, N.Y. Local Law Report No. 49, Int. 193.) Section 19-152 of the Code provides that the owner of real property shall install, construct, repave, and reconstruct the sidewalk flags in front of or abutting such property. This section does not refer to the "curb" or "curbstone." Further, Administrative Code § 19-101(d) defines "sidewalk", for purposes of Title 19, as "that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians."

The Court of Appeals, in Vucetovic v Epsom Downs, Inc. (10 NY3d 517 [2008]), discussed the applicability of Administrative Code § 7-210 to tree wells, which is somewhat analogous to the case at bar. Noting that section 7-201 tracks section 19-152 and further noting the legislative history of section 7-201, the Court of Appeals found that section 7-210 does not impose civil liability on property owners for injuries that occur in city-owned tree wells. Further, various lower courts have found that a curbstone is not part of a sidewalk within the context of section 7-210. (see Choves v Aslam, 17 Misc 3d 1111(A) [2007]; Irizarry v The Rose Bloch 107 Univ. Place Partnership., 12 Misc 3d 733 [2006]; Arden v City of New York, 2008 NY Slip Op 30018[U][2008]; Nq v City of New York, 2007 NY Slip Op

33542[U][2007].) Further, it has been held that a protruding City metal signpost is not the responsibility of the abutting landowner. (King v Alltom Props., Inc., 16 Misc 3d 1125(A)[2007].) Thus, the court find that the curbstone is not within the defendant's responsibility.

Furthermore, the defendant made a prima facie showing that it did not create the defect or make special use of the area where plaintiff fell. Plaintiff has failed to raise an issue of fact as to whether the defendant created the defect herein or made special use of the curb area.

Accordingly, this motion by defendant for summary judgment is granted, and the action is dismissed.

Dated: January 27, 2009

AUGUSTUS C. AGATE, J.S.C.