

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

D56003  
Q/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 15, 2018

WILLIAM F. MASTRO, J.P.  
JEFFREY A. COHEN  
SYLVIA O. HINDS-RADIX  
ANGELA G. IANNACCI, JJ.

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2017-12603

DECISION & ORDER

Tamar Gerendash, et al., appellants, v City of  
New York, et al., defendants, Kings County Public  
Administrator, etc., respondent.

(Index No. 21785/12)

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Lester B. Herzog, Brooklyn, NY, for appellants.

Penino & Moynihan, LLP, White Plains, NY (Henry L. Liao of counsel), for  
respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Loren Baily-Schiffman, J.), dated November 2, 2017. The order, insofar as appealed from, granted the motion of the defendant Kings County Public Administrator for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

On June 25, 2012, the plaintiff Tamar Gerendash (hereinafter the injured plaintiff) allegedly tripped and fell on an uneven sidewalk abutting real property owned by the defendants Diane Costello and Costello's now deceased mother, Giovanna Barra (hereinafter the decedent), whose estate is represented by the defendant Kings County Public Administrator (hereinafter KCPA). In June 2015, Costello moved for summary judgment dismissing the complaint insofar as asserted against her, contending, inter alia, that she was exempt from the liability imposed upon certain landowners pursuant to Administrative Code of the City of New York § 7-210(b). In an order dated February 19, 2016, the Supreme Court granted Costello's motion. This Court, in a companion appeal, is affirming the order dated February 19, 2016 (*see Gerendash v City of New York*, \_\_\_ AD3d \_\_\_ [Appellate Division Docket No. 2016-06273; decided herewith]). Subsequent

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to the issuance of the order dated February 19, 2016, KCPA moved for summary judgment dismissing the complaint insofar as asserted against it on the same ground. The Supreme Court granted the motion based on the law of the case doctrine, and the plaintiffs appeal.

Contrary to the plaintiffs' contentions, the Supreme Court properly determined that, pursuant to the law of the case doctrine, it was appropriate to grant KCPA's motion for summary judgment dismissing the complaint insofar as asserted against it (*see Salvaggio v American Express Bank, FSB*, 129 AD3d 816, 817; *Maragliano v Port Auth. of N.Y. & N.J.*, 119 AD3d 534, 536; *Romagnolo v Pandolfini*, 75 AD3d 632, 634). Although this Court is not bound by the Supreme Court's prior determination pursuant to law of the case doctrine, under the circumstances presented here, we find no basis to disturb the court's invocation of that doctrine (*see Maragliano v Port Auth. of N.Y. & N.J.*, 119 AD3d at 536; *Romagnolo v Pandolfini*, 75 AD3d at 634).

The plaintiffs' remaining contentions are without merit.

MASTRO, J.P., COHEN, HINDS-RADIX and IANNACCI, JJ., concur.

ENTER:   
Aprilanne Agostino  
Clerk of the Court