

**Naupari v City of New York**

2007 NY Slip Op 30104(U)

March 13, 2007

Supreme Court, Queens County

Docket Number: 0028060

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10  
Justice

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JUANA NAUPARI and AVELINO NAUPARI,  
  
Plaintiff(s),

Index  
Number: 28060/04

- against -

Motion  
Date: 03/06/07

THE CITY OF NEW YORK, BLUE MOUNTAIN  
REAL ESTATE INC., ELMHURST MEDICAL \\  
GROUP P.C., GOLCARO EQUITIES LTD.,  
PEREZ GOLTRAM and DR. JAIME ROMAN,

Motion  
Cal. Number: 21  
Motion Seq. No. 3

Defendant(s).

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The following papers numbered 1 to 11 read on these motions by defendants Jaime Roman and the City of New York for an order granting summary judgment against plaintiff dismissing the complaint against said defendants.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1-5
Notice of Motion-Affirmation-Exhibits.....	6-8
Affirmation in Opposition-Service.....	9-11

Upon the foregoing papers it is ordered that the motions are decided as follows:

Motion by defendant Roman for summary judgment on the issue of liability dismissing plaintiff's complaint against him is denied.

Plaintiff allegedly sustained injuries as a result of slipping, tripping and falling upon a defective pedestrian ramp on the premises 37-51 91<sup>st</sup> Street a/k/a/ 90-20 Elmhurst Avenue, in Queens County on March 17, 2004. Plaintiff alleges that there was an accumulation of snow and ice on the ramp.

Although Roman avers in his affidavit that he does not own the subject premises and shows proof thereof, he fails to state that he did not construct the ramp leading to his medical office or cause it to be constructed or that he did not undertake any snow removal or repairs of the ramp prior to the accident.

In order to obtain summary judgment, movant must make a prima facie showing that he is entitled to said relief, by tendering sufficient proof to eliminate any material issues of fact (see Winegrad v. New York Univ. Med. Ctr., 64 NY 2d 851 [1985]; Zuckerman v. City of New York, 49 NY 2d 557 [1980]). Roman has failed to meet his burden. Roman has failed to allege or demonstrate that he did not create the defect or cause any repairs or work, including snow removal, to be done to the subject pedestrian ramp.

Motion by the City for summary judgment on the issue of liability dismissing plaintiff's complaint against it is granted.

There is no question that the subject pedestrian ramp upon which Juana Naupari allegedly fell was on the private premises 37-51 91<sup>st</sup> Street a/k/a/ 90-20 Elmhurst Avenue. There is no allegation that this ramp is part of the public sidewalk owned by the City. The speculative statement by plaintiffs' attorney in his affirmation in opposition that the City might be the owner of the ramp since the ramp is adjacent to the City's property (presumably, the sidewalk) does not raise an issue of fact to defeat the granting of summary judgment.

Even were the ramp part of the public sidewalk, such fact would not raise an issue of fact as to liability on the part of the City. Section 7-210 of the New York City Administrative Code places both the responsibility and the liability for maintenance and repair of the public sidewalks upon the abutting property owner. Section 7-210(c) provides that "the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition." It is undisputed that the premises contain medical offices and, therefore, are not used exclusively for residential purposes. The only other exception stated in § 7-210 is where the City itself is the abutting property owner, which is clearly not the case herein, since it is undisputed that Blue Mountain Real Estate Inc. owns said property.

Accordingly, Roman's motion is denied and the City's motion is granted and the complaint is dismissed as against the City.

Dated: March 13, 2007

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KEVIN J. KERRIGAN, J.S.C.