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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 31
NASSAU COUNTY

FRANCIA SIERRA.

Plaintiff.

Sequence No.: 005
Index No.: 005024/06

- against -

TOWN OF NORTH HEMPSTEAD, VILLAGE OF THOMASTON, VILLAGE OF GREAT NECK PLAZA, NASSAU COUNTY and SHAHLA POUMORADI.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	**X**
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	**X**
Replying Affidavits	**X**

Upon reading the papers submitted and due deliberation having been had herein, defendant Shahla Pourmoradi's motion for summary judgment dismissing the complaint as asserted against this defendant is hereby granted.

The following facts are undisputed. On February 5, 2005 plaintiff slipped and fell on snow and ice on the wheelchair access ramp of the sidewalk curb at the south-east corner of Middleneck Road South and Overlook Avenue, Great Neck, New York. As a result plaintiff suffered personal injuries and commenced the instant action asserting causes of action against the defendants for their negligent maintenance and/or failure to maintain the accident site. Specifically plaintiff alleges that defendants caused or permitted the curb area to be cracked, uneven, irregular and covered with snow and ice. (See, plaintiff's bill of particulars, paragraph 5). Defendant Pourmoradi is an owner of the real property adjoining that portion of the sidewalk curb at which the accident occurred,

Plaintiff commenced the instant action against all defendants asserting causes of action against the defendants and defendant Pourmoradi based upon their alleged negligent maintenance and/or failure to maintain the area where she fell. By short form order dated March 2, 2007 this court granted the four municipal defendants herein summary judgment and dismissed the

complaint and all cross claims asserted against these defendants. Defendant Pourmoradi now moves for summary judgment dismissing the complaint as asserted against this defendant upon the grounds that she owed no duty to maintain the sidewalk in front of her home and that she did not create the condition which allegedly caused plaintiff's fall.

In moving for summary judgment defendant Pourmoradi must demonstrate that there are no issues of fact which preclude summary judgment by the tender of evidence in admissible form. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). In opposing the motion plaintiff must demonstrate a triable issue of fact through admissible evidence. Zuckerman v. City of New York, supra.

At her deposition defendant Pourmoradi testified that:

1) she is the "co-owner" of the two family house property located at 2 Overlook Avenue;
2) all four of the co-owners, including plaintiff, are out-of-possession owners;
3) prior to the date of the accident none of the co-owners or anyone on their behalf performed any work of any kind on the sidewalk;
4) prior to the date of the accident the co-owners did not hire anyone to perform snow removal services on the sidewalk and that none of the co-owners took on the responsibility themselves of removing the snow.

First, defendant Pourmoradi asserts that she owed no duty to plaintiff. It has been established that the curb area where the accident occurred is owned and maintained by the Village of Thomaston. Liability for a dangerous or defective condition which causes plaintiff to suffer personal injury must be based upon a defendant's ownership, control, occupancy or special use. See, Warren v. Wimorite, Inc., 211 A.D.2d 904 (3rd Dep't 1995); Turisi v. Ponderosa, Inc., 179 A.D.2d 956 (3rd Dep't 1992); Bridgham v. Fairview Plaza, Inc., 257 A.D.2d 914 (3rd Dep't 1999). Absent creating the condition herself or enjoying a special use, the only way this defendant, as the owner of property adjoining a public sidewalk, can be held civilly liable for injuries caused by a dangerous condition on that sidewalk, is if the Village Code specifically requires the adjoining owner to safely maintain the property and further imposes civil liability upon the owner in the event she violates the maintenance requirement and a plaintiff suffers injuries as a result of that violation. See, Booth v. City of New York, 272 A.D.2d 357 (2nd Dep't 2000); Norcott v. Central Iron Metal Scraps, 214 A.D.2d 660 (2nd Dep't 1995). Code of the Village of Thomaston §173-11 provides:

> "Every person owning or occupying a house or other building on a lot, or owning or being entitled to the possession of any vacant lot, having a sidewalk within the Village of Thomaston shall keep said sidewalks free from obstruction from snow or ice and shall, within twenty-four (24) hours after said snow or ice have fallen to the ground, remove the same, and shall also at all times keep said sidewalks in good and safe repair and clean and free from dirt, filth and weeds or other obstructions and encumbrances.
>
> Any person, firm or corporation committing an offense against any provision of this Article shall be punishable as provided in the general penalty provisions contained in

Chapter 1, General Provisions, Article II, of this code."

Further, where, here, as here, a defendant demonstrates that it did not own the area where the accident occurred, create the condition or enjoy a special use of same, it has met its *prima facie* burden on a motion for summary judgment. See, Delano v. Consolidated Edison Company of New York, 231 A.D.2d 671 (2nd Dep't 1996). There is no allegation that defendant Pourmoradi enjoyed a special use of the sidewalk. (See, plaintiff's complaint and bill of particulars).

Defendant Pourmoradi having met her prima facie burden of demonstrating that she had no duty to plaintiff or created the condition herself, the burden now shifts to plaintiff to demonstrate a triable issue of fact. Zuckerman v. City of New York, supra.

In opposition plaintiff first contends that as the court has already found that the municipal defendants all demonstrated that they did not create the condition that logic dictates that defendant Pourmoradi or another owner of the adjoining property must have. Such to this court is at most a conclusory assertion which is insufficient to raise an issue of fact. See, Ayotte v. Gervasio, 81 N.Y.2d 1062 (1993).

Neither is plaintiff's position that an issue of fact exists as to whether any of the co-owners other than Pourmoradi created the condition availing. Plaintiff takes the position that Ms. Pourmoradi merely testified that she believed none of her fellow co-owners of the property took responsibility for maintenance and snow removal on the sidewalk area where plaintiff fell and therefore did not prove as much by admissible evidence. As set forth above, the owners of this property did not own the sidewalk and could not be held civilly liable for their failure to comply with the statutory maintenance requirement. The only way they could be held liable is if they created the condition. Such is not based upon defendant Pourmoradi's ownership of the adjoining property, but is based upon her status as an individual who may or may not have physically created a dangerous condition. Delano v. Consolidated Edison Company of New York, supra. Plaintiff does not maintain an action against the other property owners or tenants at the adjoining property and Ms. Pourmoradi's testimony as to whether she believed her fellow owners created the condition is of no relevance. Plaintiff also offers nothing in opposition which demonstrates an issue of fact as to whether this defendant created the condition.

Plaintiff further asserts that the statutory scheme set forth above creates a situation in which no party may be held liable for the injuries suffered as a result of her accident. To accept plaintiff's reasoning would mean that if this accident involved a dangerous condition such as a spill on defendant's property which defendant did not create and for which defendant had no notice, that the court should disregard the wealth of cases law which holds that said property-owner defendant is not liable. Plaintiff seems to argue here that all injuries must be compensable.

Lastly, plaintiff's position that the fact that the code imposes criminal sanctions against property owners who violate it should lead the court to conclude that civil liability should also be imposed is unavailing. The case cited by plaintiff, DiSilvestro v. Samler, 32 A.D.3d 987 (3rd

Dep't 2006), does not stand for this position as urged by plaintiff. In that case the Appellate Division held that a violation of a criminal statute is evidence of negligence on defendant's part. The case law cited above, however, stands for the proposition that unless specifically set forth in the quasi-criminal statute, no civil liability will be imposed for its violation. See, Booth v. City of New York, supra; Norcott v. Control Iron Metal Scraps, supra. Such are completely different concepts.

All other authority cited by plaintiff is inapplicable to the matter at hand. The court finds that plaintiff has failed to meet her burden of demonstrating a triable issue of fact.

Accordingly, based upon the foregoing, defendant Pourmoradi's motion for summary judgment is granted and it is directed that the complaint, as asserted against defendant Pourmoradi is dismissed.

So Ordered.

A.J.S.C.

Dated: November 19, 2007