

Johnson v 81-83 Rivington Corp.

2010 NY Slip Op 31877(U)

June 29, 2010

Supreme Court, New York County

Docket Number: 115002/08

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON

PART 55

Justice

Kelly To Johnson

INDEX NO.

115002/08

MOTION DATE

3/16/10

MOTION SEQ. NO.

02

MOTION CAL. NO.

81-83 Rivington Corp

- v -

The following papers, numbered 1 to 8 were read on this motion to/for summary judge

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3

4-6

7-8

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

with the amended **FILED** memorandum decision and order.

FILED
JUL 13 2010
COUNTY CLERK'S OFFICE
NEW YORK

N.B. — Pre-trial conference is scheduled for Aug. 2, 2010 @ 2 PM.

Dated: 6/29/10

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
KELLY JO JOHNSON,

Plaintiff,

Index No.: 115002/08

- against -

81-83 RIVINGTON CORP.,

Defendant.

FILED
JUL 13 2010
COUNTY CLERK'S OFFICE
NEW YORK

-----X
81-83 RIVINGTON CORP.,

Third-Party Plaintiff,

Index No.: 591187/09

- against -

TOBALDI, LTD, and TOBALDI, INC.,

Third-Party Defendant.

-----X
Jane Solomon, J.:

In this personal injury action, defendant/third-party plaintiff, 81-83 Rivington Corp. (Rivington), moves, pursuant to CPLR 3212, for an order granting summary judgment dismissal of the complaint. For the reasons set forth below, the motion is denied.

Background

Plaintiff alleges that on August 1, 2008, she sustained injuries when she tripped and fell on the cracks in a ramp-like sidewalk curb that abuts 81-83 Rivington Street, New York, New York (the Premises) at the intersection of Rivington and Orchard Streets.

Plaintiff testified that she took one or two steps

before she fell (Plaintiff's dep. at 85, Notice of Motion, Ex. I), "very close from the beginning of the [ramp]" (*id.* at 89). During her testimony, plaintiff also suggests that the accident may have occurred beyond the ramp (*id.* at 103-104).

Defendant, whose sole principal is non-party Donald Galishoff, has owned the premises since the 1960s, and testified that the City installed the ramp on the corner (Galishoff Aff., ¶ 1, Notice of Motion, Ex. F). He denied receiving any violations or being involved in any prior lawsuits concerning the ramp (Galishoff dep., at 23-24). Defendant claims it did not cause or create any defects in the ramp and that the City, having installed the ramp, is responsible for it (*id.* at 10-11, Moskowitz Aff., Ex. G). In response, plaintiff points out that, after the accident, defendant had the sidewalk, including the ramp, repaired (see Affirmation Opposition, ¶ 10 & Ex. 1).

Discussion

In order for summary judgment to be granted, the movant must proffer admissible evidence to make a prima facie showing of entitlement to judgment as a matter of law by producing sufficient evidence to show the absence of any material issue of fact (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]).

Once the moving party has made this showing, the burden is on the opposing party to demonstrate "evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228

[1st Dept 2006]). "If there is any doubt as to the existence of a triable issue, the motion should be denied" (*Grossman v Amalgamated Hous. Corp., Inc.*, 298 AD2d 224, 226 [1st Dept 2002]).

Section 7-210 (b) of the Administrative Code of the City of New York (Administrative Code § 7-210 [b]), commonly referred to as the "sidewalk law," 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 ... personal injury ... proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition," including the failure to "reconstruct, repave, repair or replace defective sidewalk flags."

Defendant argues that ramps are not deemed sidewalk flags or part of the sidewalk. Defendant cites to *Ortiz v City of New York* (67 AD3d 21 [1st Dept 2009]), which held that the ramps installed by the City are not sidewalk flags or part of the sidewalk, and remain the responsibility of the City. However, on March 25, 2010, the Court of Appeals reversed the Appellate Division in *Ortiz*, and granted the City's motion for summary judgment dismissing the complaint against it, finding that "[n]o triable issue of fact exists as to whether the City created a dangerous condition that caused plaintiff's injuries" (*Ortiz v City of N.Y.*, 14 NY3d 779 [2010]).

Moreover, as defendant notes in its papers, the First Department has defined the sidewalk as "that portion of a street between the curb lines but not including the curb, intended for use of pedestrians" (*id.*). Clearly, ramps are intended for use by pedestrians, whether disabled or not.


In light of the Court of Appeals' most recent decision in *Ortiz*, defendant's motion is denied. Accordingly, it is

ORDERED that the motion for summary judgment by defendant 81-83 Rivington Corp. is denied; and it further is

ORDERED that counsel shall appear for a pre-trial conference in Part 55, 60 Centre Street, Room 432, New York, New York, on August 2, 2010 at 2 PM.

Dated: June 29, 2010

ENTER:



J.S.C.
JANE S. SOLOMON