

**Trumpatori v Oceanside Cove I Owners Corp.**

2011 NY Slip Op 33735(U)

March 31, 2011

Supreme Court, Nassau County

Docket Number: 009604/10

Judge: Randy Sue Marber

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

**JUSTICE**

TRIAL/IAS PART 18

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JOSEPH TRUMPATORI,

Plaintiff,

Index No.: 009604/10  
Motion Sequence...01, 02  
Motion Date... 02/07/11

-against-

OCEANSIDE COVE I OWNERS CORP.,  
OCEANSIDE COVE HOME OWNERS  
ASSOCIATION, INC., OCEANSIDE COVE  
REDEVELOPMENT COMPANY OWNERS  
CORP., ALEXANDER WOLF & COMPANY,  
INC. and VILLAGE LANDSCAPING, INC.,

Defendants.

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Papers Submitted:

- Notice of Motion.....X
- Notice of Motion.....X
- Affirmation in Opposition.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X
- Reply Affirmation.....X

Upon the foregoing papers, the Defendant, OCEANSIDE COVE REDEVELOPMENT COMPANY OWNERS CORP.'s ("REDEVELOPMENT") motion (Mot. Seq. 01), seeking an order pursuant to CPLR § 3212, dismissing the Plaintiff's

complaint on the ground that it had no duty to maintain the premises where the Plaintiff's accident allegedly occurred, is decided as hereinafter provided. Further, the Plaintiff's motion (Mot. Seq. 02), seeking an order declaring that the Defendant, OCEANSIDE COVE HOME OWNERS ASSOCIATION, INC. ("ASSOCIATION") had the duty, on the date of the Plaintiff's accident, to provide certain exterior maintenance and repair services, including snow removal and maintenance of the walkway where the Plaintiff's accident allegedly occurred, is decided as hereinafter provided.

The Plaintiff commenced this action seeking damages for personal injuries allegedly sustained due to a slip and fall on ice on a sidewalk owned by the Defendant, REDEVELOPMENT, and allegedly maintained by the Defendant, ASSOCIATION. The Plaintiff claims that on February 17, 2010, at approximately 6:45 a.m., he slipped and fell on ice on the sidewalk abutting Apartment 3506 of "The Ocean Cove" cooperative development in Oceanside, County of Nassau, State of New York.

The Defendant, REDEVELOPMENT contends that, pursuant to a prospectus entered into between it and the Defendant, ASSOCIATION, the ASSOCIATION is solely responsible for providing certain exterior maintenance and repair services for the sidewalk where the Plaintiff allegedly fell. In support of its application, REDEVELOPMENT cites to portions of the prospectus which delegate the duty to maintain the sidewalk to the ASSOCIATION. In further support of the motion, the Defendant, REDEVELOPMENT submitted the Affidavit of Nancy Magaddino, the President of Senior Development for the Board of Directors of REDEVELOPMENT.

Ms. Magaddino states in her Affidavit that REDEVELOPMENT has no duty to remove snow and/or ice on the sidewalks and/or the parking lot in the area where the Plaintiff allegedly fell and that she has never known REDEVELOPMENT to undertake that responsibility. *See* Affidavit of Nancy Magaddino, dated October 19, 2010, attached to the Defendant REDEVELOPMENT's Notice of Motion as Exhibit "B".

The Defendants, ASSOCIATION, OCEANSIDE COVE I OWNERS CORP. and ALEXANDER WOLF & COMPANY oppose REDEVELOPMENT's motion for summary judgment based upon the fact that discovery has yet to be completed in this matter. No depositions have been conducted. Counsel for the foregoing Defendants states that the exact location of the accident has yet to be determined. Counsel posits that the motion is premature in this early stage of discovery. Counsel also argues that, in any event, as the owner of the premises, REDEVELOPMENT cannot absolve itself of liability as a landowner has a non-delegable duty to provide its tenants with a reasonably safe premises.

The Plaintiff requests that the Court declare that the Defendant, ASSOCIATION, has the sole duty to maintain the sidewalk where the Plaintiff's accident allegedly occurred. The Defendants oppose the Plaintiff's motion based upon the fact that discovery has not been completed in this matter.

The Court agrees that the instant motions are premature at this stage of discovery. *Baron v. Incorporated Village of Freeport*, 143 A.D.2d 792 (2d Dept. 1988). The affidavits and prospectus indicating that the Defendant, ASSOCIATION has the duty

to maintain the premises where the Plaintiff's accident allegedly occurred is insufficient to warrant summary judgment as a matter of law. Several issues are yet to be determined including where the Plaintiff's accident occurred and the extent to which the Defendants, ASSOCIATION and/or REDEVELOPMENT, were on notice that there was snow and/or ice on the premises.

Accordingly, it is hereby

**ORDERED**, that the Defendant, REDEVELOPMENT's motion (Mot. Seq. 01), seeking an order pursuant to CPLR § 3212, dismissing the Plaintiff's complaint, is **DENIED**; and it is further

**ORDERED**, that the Plaintiff's motion (Mot. Seq. 02), seeking an order declaring that the Defendant, ASSOCIATION had the duty on the date of the Plaintiff's accident to provide certain exterior maintenance and repair services including snow removal and maintenance of the walkway where the Plaintiff's accident allegedly occurred, is **DENIED**.

This decision constitutes the decision and order of the court.

DATED: Mineola, New York  
March 31, 2011

  
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Hon. Randy Sue Marber, J.S.C.

**ENTERED**  
APR 04 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE