PTC 3/4/13 @ 9:30 AM

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF PUTNAM

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JOSEPH TORREGROSSA and MARIA TORREGROSSA,

Plaintiffs,

-against -

ENTERPRISE HOLDINGS, INC., ENTERPRISE RENT-A-CAR and GARDEN HOMES BREWSTER LIMITED PARTNERSHIP,

Defendants.

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DECISION & ORDER

Index No. 3350-2010

Sequence No. 1-2

LUBELL, J.

The following papers were considered in connection with **motion sequence 1** by defendant Garden Homes Brewster Limited Partnership for an Order pursuant to CPLR Rule 3212 granting defendant Garden Homes Brewster Limited Partnership summary judgment dismissing the complaint and all cross-claims, and such other and further relief s this Court deems just and proper; and **motion sequence 2** by the Enterprise defendants for an Order (1) granting Enterprise Holding, Inc. and Elrac Inc. s/h/a Enterprise Rent-A-Car summary judgment pursuant to CPLR 3212 and dismissal of plaintiffs' complaint; (2) Granting such other and further relief deem just and proper:

PAPERS	**NUMBERED**
motion sequence 1	
Motion/Affirmation/Exhibits A-K	1
Affirmation in Opposition/Exhibits A-D	2
motion sequence 2	
Motion/Affirmation/Exhibits A-K	3
Affirmation in Opposition/Exhibits A-D	4
Reply Affirmation	5
Reply Affirmation in Further Support	6

Plaintiff brings this personal injury action against defendants Enterprise Holdings, Inc. and Elrac Inc, s/h/a Enterprise Rent-A-Car (collectively referred to as "Enterprise") and the owner of the premises upon which Enterprise operated an automobile rental business, defendant Garden Homes Brewster Limited Partnership ("Garden Homes"), in connection with injuries allegedly sustained by plaintiff on December 24, 2009.

Plaintiff claims that upon exiting Enterprise's building and heading towards the parking lot through the only means of ingress and egress, a paved sidewalk bordered by a parking space and a retaining wall with overhanging lip, he was injured when he was caused to fall due to the alleged "combination of a downward graduated retaining wall and an obstructive vehicle parked at the end of [said walkway] . . ." which vehicle was permitted to be parked there by an Enterprise employee.

Summary Judgment - Garden Homes:

> An owner of property has a duty to maintain his or her premises in a reasonably safe condition . . . [including a duty to] provid[e] a reasonably safe means of ingress and egress [citation omitted]. . . The familiar formulation of the law of premises liability is that "[i]n order for a landowner to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon property, it must be established that a defective condition existed and that the landowner affirmatively created the condition or had actual or constructive notice of its existence" (Lezama v. 34-15 Parsons Blvd, LLC, 16 A.D.3d 560, 560, 792 N.Y.S.2d 123; see Fontana v. R.H.C Dev., LLC, 69 A.D.3d 561, 892 N.Y.S.2d 504; Bodden v. Mayfair Supermarkets, 6 A.D.3d 372, 373, 773 N.Y.S.2d 905). A landowner has constructive notice of a dangerous or defective condition on property when the condition is visible and apparent, and has existed for a length of time sufficient to afford a reasonable opportunity to discover and remedy it (see Gordon v. American Museum of Natural History, 67 N.Y.2d 836, 837, 501 N.Y.S.2d 646, 492 N.E.2d 774; Davis v. Rochdale Vil., Inc., 63 A.D.3d 870, 870-871, 882 N.Y.S.2d 194; Latalladi v. Peter

> Luger Steakhouse, 52 A.D.3d 475, 476, 859 N.Y.S.2d 698). Thus, in cases where an owner is not alleged to have created the dangerous or defective condition, liability may nevertheless be predicated on the owner's failure to remedy the condition despite notice and sufficient time to do so (see Perlongo v. Park City 3 & 4 Apts., Inc., 31 A.D.3d 409, 410, 818 N.Y.S.2d 158; Birthwright v. Mid-City Sec., 268 A.D.2d 401, 702 N.Y.S.2d 325).

(Walsh v Super Value, Inc., 76 AD3d 371, 375 [2d Dept 2010]).

The Court is satisfied that defendant Garden Homes has come forward in the first instance with a sufficient showing warranting summary judgment in its favor as a matter of law by establishing that it maintained its premises in a reasonable safe condition (Acavedo v. Camac, 293 AD2d 430, 431 [2d Dept., 2002]), and had neither created nor had notice of the alleged dangerous or defective condition.

Admittedly, the subject walkway and retaining wall, standing alone, were not dangerous or defective in and of themselves. Plaintiff argues that it was the presence of a parked vehicle partially obstructing ingress and egress to the premises that caused the walkway to become significantly narrowed and, that coupled with the graduated retaining wall on the other side, created a deceptively dangerous condition for those passing in between.

Plaintiff's position that Garden Homes, as the property owner, should have foreseen that vehicles would improperly park in such a manner and, as such, should have guarded against same is not persuasive. Garden Homes is a commercial landlord which leased part of its building to Enterprise. The area in question is not a designated parking space and there is no showing that Garden Homes was ever put on notice of any difficulties experienced by others in walking from the Enterprise building to the parking area, nor is there any other showing in admissible form such as would establish, upon this motion, that the graduating wall, with overhanging lip, created such a dangerous condition that a reasonable person in Garden Home's position would have known or had reason to know that a dangerous condition existed (see, Walsh v. Super Value, Inc., supra at 377).

Summary Judgment - Enterprise:

Although Enterprise has also come forward in the first instance with an sufficient showing of entitlement to judgment in its favor as a matter of law, the Court finds that plaintiff has raised material issues of fact regarding same. Among other things, there are questions of fact as to the location of the vehicle about which plaintiff complains and whether it created a dangerous condition for those passing through (see, Marmol v. North Isle Village, Inc., 48 AD3d 760 [2d Dept., 2008]).

Based upon the foregoing, and there being no merit to any other contention raised, it is hereby

ORDERED, that summary judgment be and is hereby granted in favor of Garden Homes and is denied as to Enterprise.

All parties remaining in this action are directed to appear before the Court for a Pre-Trial Conference on March 4, 2013 at 9:30 a.m.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Carmel, New York
February 11, 2013

S/ _____
HON. LEWIS J. LUBELL, J.S.C.

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