

**Monastero v Realty Resources Chartered, LLC**

2018 NY Slip Op 33628(U)

March 16, 2018

Supreme Court, Sullivan County

Docket Number: 0937-2016

Judge: Michael F. McGuire

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN

**SHARYN MONASTERO,**

Plaintiff,

**Decision & Order**

-against-

**REALTY RESOURCES CHARTERED, LLC,**

Defendant,

**Motion Return Date: November 27, 2017**

**RJI No.: 52-38729-2016**

**Index No.: 0937-2016**

**Appearances:** O'Connor, O'Conner, Bresee & First, P.C.  
Attorneys for Defendant  
Realty Resources Chartered, LLC  
20 Corporate Woods Boulevard  
Albany, New York 12211  
By: Carol E. Crummey, Esq.

**McGUIRE, J.,**

In this action to recover damages for personal injuries sustained as a result of a slip and fall Defendant Realty Resources Chartered, LLC, moves for an order of this Court pursuant to CPLR §3212[b] dismissing Plaintiff's verified complaint in its entirety. The Plaintiff Sharyn Monastero failed to submit opposition and the motion was deemed fully submitted as of November 27, 2017.

Plaintiff Monastero commenced this action, as a result of her tripping and falling, and sustaining injuries, in the parking lot of the premises located at 68 Godfrey Road in the Town of Bloomingburg, located in Sullivan County, New York, known as "Godfrey Meadows", on September 19, 2015. Plaintiff alleges that she exited her car, walked around the front of her car

to step up on the walkway to get to her apartment, where she tripped and fell on a crack in the pavement.

The Plaintiff's complaint alleges that Defendants Realty Resources Chartered, LLC, and Realty Resources, LLC, are the owners of the premises located at 68 Godfrey Road in the Town of Bloomingburg, located in Sullivan County, New York, and is known as "Godfrey Meadows". The complaint further alleges that the Defendants maintained, managed, controlled, operated, and were the lessee or lessor of the premises.

Defendant Realty Resources Chartered, LLC, joined issue by serving a Verified Answer on October 7, 2016, specifically denying that it was an owner, maintainer, manager, controller, operator or lease of the premises known as "Godfrey Meadows".

Summary judgment is a drastic remedy and should only be granted when there are no triable issues of fact (see *Andre v. Pomeroy*, 35 NY2d 361, 364 [1974]). It is well settled that the proponent of a summary judgment motion has the initial burden of making a *prima facie* showing of entitlement to judgment as a matter of law, putting forth sufficient evidence to demonstrate to the Court the absence of any material issues of fact (see *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden then shifts to the opponent of the motion to establish by admissible proof, the existence of genuine issues of fact to require a trial (see *Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Defendant Realty Resources Chartered, LLC, now argues that they are the incorrect entity/party to this action and as such have no duty to Plaintiff and in the alternate argue that even if Defendant Realty Resources Chartered, LLC, were a correct party to this action, the defect in the pavement was trivial in nature and the complaint must be dismissed as liability cannot be established. Defendant notes that they have repeatedly informed Plaintiff that they are

the incorrect party to the suit, including informing Plaintiff at every Court conference beginning on January 30, 2017, and ending on the last conference held on October 2, 2017.

In support of their motion, Defendant Realty Resources Chartered, LLC, submits an Attorney's Affirmation, Memorandum of Law, a copy of: the Summons and Complaint, Verified Answer, Combined Discovery Demands, Verified Bill of Particulars, and five (5) pictures of the parking lot at Godfrey Meadows. Additionally, Defendant attaches copies of the deposition testimony of Plaintiff Sharyn Monastero, non-party Shari Trust, Defendant Realty Resources Chartered, LLC, by Sharlene McEachern who works for Realty Resources Management, and non-party Michael Wayne Robbins.

Defendant, in support of their argument that they are the incorrect entity/party to the action directs the Court's attention to the relevant parts of the deposition testimony of Shari Trust, who is the Executive Director of Rural Sullivan Housing, and is the company that provides onsite management to Godfrey Meadows. Ms. Trust testified that she had never heard of Realty Resources Chartered, LLC, and had only dealt with an entity named Realty Resources Management. Additionally, Defendant cites portions of the deposition testimony of Sharlene McEachern who is the Regional Property Manager of Realty Resources Management, Ms. McEachern testified that Godfrey Meadows is owned by Bloomingburg Housing Associates, who then hired the company she works for, Realty Resources Management, to manage the property, who in turn hired Rural Sullivan Housing to do the onsite managing of the property. Ms. McEachern further testified that she had heard of Defendant Realty Resources Chartered but does not work for them and they have no role in the Godfrey Meadows property, stating that they are two different entities.

The evidence submitted in support of Defendant's motion demonstrates that Realty Resources Management and Defendant herein are two separate entities. "Courts will only pierce the corporation veil and hold two corporations to constitute a single legal unit, where one is so related to, or organized, or controlled by, the other as to be its instrumentality or alter ego." *Ioviero v. Ciga Hotels, Inc.*, 101 AD2d 852, 853, [2<sup>nd</sup> Dept. 1984]. There is nothing contained within the evidence submitted herein to suggest that the two entities (Defendant Realty Resources Chartered and Realty Resources Management) are a single legal unit.

"To establish a prima facie case of negligence, the plaintiff is required to demonstrate that the defendant owed a duty to him or her, that the defendant breached that duty and that such breach was a proximate cause of the injuries sustained" *Evarts v. Pyro Engineering, Inc.*, 117 AD3d 1148, 1150 [3<sup>rd</sup> Dept. 2014]. Inasmuch as Defendant Realty Resources Chartered has met their prima facie burden establishing that they owe no duty of care to Plaintiff as they have no involvement with Godfrey Meadows, and are in fact the wrong party to the suit, the burden shifts to Plaintiff to establish that a question of fact exists (see *Zuckerman v. City of New York*, supra, see also *Hart v. O'Brien*, 72 AD3d 1257 [3<sup>rd</sup> Dept. 2010]). Plaintiff failed to submit any opposition whatsoever and therefore has failed to raise a question of fact.

The Defendant also argues that regardless of whether this Court were to determine that they are an incorrect party to the suit or not, the complaint should be dismissed, as the defect in the pavement was trivial.

"A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses. Only then does the burden shift to the plaintiff to establish an issue of

fact.” *Hutchinson v. Sheridan Hill House Corp.*, 26 NY3d 66, 79 [2015]. In considering whether the crack, which it is alleged, Plaintiff tripped over, in the parking lot of Godfrey Meadows is trivial the Court must consider the circumstances surrounding the injury, as well as the width, depth, elevation, irregularity and the appearance of the alleged defect (see *Chirumbolo v. 78 Exch. St., LLC*, 137 AD3d 1358 [3rd Dept. 2016]).

In the instant application, Defendant submits Plaintiff’s own deposition testimony, as well as photographs identified by Plaintiff of the crack/parking area. Defendant also submits the deposition testimony of Ms. Trust the onsite manager who conducted weekly inspections of the parking lot, Ms. McEachern who investigated the parking lot after the alleged incident and Michael Wayne Robbins who provides maintenance services at Godfrey Meadows.

Plaintiff testified that she did not know what caused her to fall; it was only after the incident that she came to believe that a crack in the parking lot caused her fall. Plaintiff further testified that she always parked in the same few spots of the apartment complex where she lived (Godfrey Meadows) and took the same path from her car to her apartment everyday. Plaintiff was unable to describe how long or wide the crack that caused her to fall was, or whether it was raised or not. Ms. McEachern testified that she went to investigate the crack in the parking lot after the incident was reported, she characterized the cracks she saw in the parking lot as hairline and the crack at issue as not being uneven.

Defendant additionally submits the deposition testimony of Michael Wayne Robbins who is employed by Pen Bay Builders who provide maintenance services for Godfrey Meadows. As part of Mr. Robbins duties he inspects the property for potential hazards, and had also inspected the crack that it is alleged caused Plaintiff’s fall, describing it as a “regular crack” with no lip.

The Court notes that the color photograph's submitted of the area of the parking lot at issue show that there are no obstructions, the parking lot is free of debris, the parking lot is relatively smooth and no height differential can be seen where there is a crack.

The testimony of Plaintiff, that she was unsure at first of what had caused her fall, that she walked the same way from her car to her apartment on other occasions, coupled with the other deposition testimony of Ms. Trust, Ms. McEachern, and Mr. Robbins, together with the photographs evidence that Defendant's initial burden of making a prima facie showing that any alleged defect in the parking lot of Godfrey Meadows was too trivial to be actionable has been satisfied.

Plaintiff herein has failed to submit anything in opposition to the instant motion and has therefore failed to raise a question of fact concerning the trivial nature of the defect.

Accordingly, based upon the foregoing, it is hereby

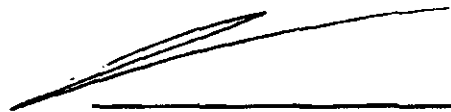
**ORDERED** that Defendant's motion is **granted**; and it is further

**ORDERED** that Plaintiff's complaint is dismissed, with prejudice, in its entirety.

This shall constitute the Decision and Order of this Court. All papers, including the original copy of this Decision and Order, are being forwarded to the Office of the Sullivan County Clerk for filing. Counsel are not relieved from the provisions of CPLR §2220 regarding service with notice of entry.

**Dated: Monticello, New York**  
**March 16, 2018**

**ENTER:**



**HON. MICHAEL F. MCGUIRE, A.J.S.C.**

**Cc: Sobo & Sobo, LLP, attorneys for Plaintiff**

**Papers Considered:**

- 1. Notice of Motion and Attorney Affidavit of Carol E. Crummey, Esq., dated November 6, 2018, with Exhibits "A" through "I"; and Memorandum of Law**