At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 7th day of October 2019

PRESENT:
HON. CAROLYN E. WADE,
Justice

----------X,

JASON CANNADY,

Plaintiff,

Index No. 508828/18

-against-

DECISION/ORDER

Seq 1

2000 ROCKAWAY PARKWAY ASSOCIATES, I.S.J. MANAGEMENT CORP., BELT ROCK REALTY LLC AND JENEL MANAGEMENT CORP.,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of Plaintiff's Motion:

Papers	Numbered
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1
Cross-Motion and Affidavits/Affirmations.....	
Answering Affidavits/Affirmations.....	2
Reply Affidavits/Affirmations.....	3
Memorandum of Law.....	

Upon the foregoing cited papers, and after oral argument, plaintiff Jason Cannady moves for an Order granting him summary judgment on the issue of liability against the defendants.

The underlying action was commenced by plaintiff Jason Cannady ("Plaintiff"), who alleges that on September 6, 2017, he sustained severe personal injuries after tripping and falling on a pothole that was in a parking lot located at 2082 Rockaway Plaza Shopping Center, Brooklyn, New York. The subject premises was owned/managed by defendants 2000 Rockaway Parkway Associates, ISJ Management Corp., Belt Rock Realty LLC, and Jenel Management Corp (collectively, "Defendants").

A party moving for summary judgment meets its prima facie showing of entitlement to judgment as a matter of law "by tendering sufficient evidence to eliminate any material issues of fact from the case (*St. Claire v. Empire Gen. Const. & Painting Corp.*, 33 AD3d 611 [2d Dept 2006]) [citations omitted]). Once the movant makes its prima facie case, the burden shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" *Id.* (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

In support of the instant motion, Plaintiff notes that at his January 14, 2019 deposition, he looked at a photograph, and identified the pothole, which was filled with water, that caused his fall in Defendants' parking lot (Exhibit "E" of Plaintiff's motion). He points out that Henry Poyker ("Poyker"), ISJ Management Corp.'s property manager, testified that there was no set inspection schedule; and that he was not sure if he had been to the parking lot in 2017 (Exhibit "D," pg. 12 of Plaintiff's motion). Poyker also stated that the building manager visited the property regularly, but did not perform inspections (Exhibit "D," pg. 14, line 19-20; pg. 15, line

17; and pg. 16, lines 7-10 of Plaintiff's motion). Plaintiff further notes that New York City Administrative Code § 7-210 imposes a non-delegable duty upon a property owner to maintain the sidewalk abutting its property.

Defendants, in opposition, set forth the summary judgment standard, and argue that there is no evidence that they had actual or constructive notice of the condition.

In rebuttal, Plaintiff avers that Defendants have not applied the law to the specific facts in this case; and that their failure to conduct a reasonable inspection of the property is relevant to the issue of constructive notice.

New York City Administrative Code § 7-210, in pertinent part, provides as follows:

> a. It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition.
>
> b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This subdivision shall not apply to one-, two-, or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

Moreover, "[t]o impose liability upon the defendants, there must be evidence tending to show the existence of a dangerous or defective condition and that the defendants either created the condition or had actual or constructive notice of it" (*Bodden v Mayfair Supermarkets, Inc.*, 6 AD3d 372 [2d Dept. 2004]).

In the instant case, Plaintiff identified the pothole in the parking lot that caused him to fall. Defendants have not submitted a supporting affidavit from an individual with personal knowledge of the facts to refute this contention. In addition, Poyker, Defendants' property manager, indicated that he was unsure whether he inspected the property in 2017- the year of the incident. Poyker also admitted that a building manager was regularly on the premises, but did not perform inspections. Consequently, this Court determines that Plaintiff has established that the Defendants had constructive notice of the pothole.

Accordingly, based upon the above, Plaintiff's Motion for Summary Judgment on liability against the Defendants is **GRANTED**.

This constitutes the Decision/Order of the court.

HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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ACTING SUPREME COURT JUSTICE

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KINGS COUNTY CLERK
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