SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 57

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WILLIAM KEATING,

Plaintiff,

- v -

CHATHAM GREEN, INC. AND, CHATHAM GREEN MANAGEMENT CORP., GERARD PICASO, HALSTEAD MANAGEMENT COMPANY, LLC,GERARD J. PICASO INC.,HALSTEAD PROPERTY, LLC,PICASO HALSTEAD MANAGEMENT, LLC.

Defendant.

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INDEX NO. 159764/2014

MOTION DATE 09/22/2020

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

In this personal injury action, defendants, Chatham Green, Inc., Chatham Green Management Corp., and Gerard J. Picaso Inc. (collectively referred to as the "defendants") move pursuant to Section 3212 of the CPLR for summary judgment dismissing plaintiff William Keating's complaint.

Plaintiff alleges that while walking on a public sidewalk, he tripped on a raised sidewalk slab and sustained injuries. The accident occurred in front of the premises located at 185 Park Row, New York, NY. Defendants contend that the action should be dismissed as against Chatham Green Management Corp., as the evidence shows that it was neither the owner nor the manager of the premises in question. Further, defendants contend that the action should be dismissed as against Gerard J. Picaso, Inc. because it is merely the manager of the premises and

only owes a contractual duty to the property owner, and no statutory or common law duty the plaintiff, and as against Chatham Green, Inc., which the parties agree was the owner of the premises at issue, because it did not have prior notice of the alleged defective condition.

In opposition, plaintiff contends that defendants have not demonstrated a prima facie entitlement to summary judgment as a matter of law and that specifically, Chatham Green Management Corp., and Gerard J. Picaso, Inc., had responsibility for the maintenance of the sidewalk in question as a property manager/agent and that Chatham Green, Inc.'s allegation that the defect happened instantly with no notice is unsupported by the evidence and conclusory.

Analysis

"'The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], *quoting Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present 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], *citing Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). The evidence presented in a summary judgment motion must be examined in the "light most favorable to the party opposing the motion" (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 1st Dept 2010]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos,* 46 NY2d 223, 231 [1978]).

To demonstrate entitlement to summary judgment in a trip-and-fall case, the defendants had to establish that they maintained the premises in a reasonably safe condition and that they did not create a dangerous or defective condition on their property or have either actual or constructive notice of a dangerous or defective condition for a sufficient length of time to remedy it (*see Molloy v Waldbaum, Inc.*, 72 AD3d 659 [2010]; *Gradwohl v Stop & Shop Supermarket Co., LLC*, 70 AD3d 634, 636 [2010]; *see also Hayden v Waldbaum, Inc.*, 63 AD3d 679 [2009]; *Denker v Century 21 Dept. Stores, LLC*, 55 AD3d 527 [2008]; *Villano v Strathmore Terrace Homeowners Ass'n, Inc.*, 76 AD3d 1061, 908 NYS2d 124 [2010]).

Defendants contend that Chatham Green, Inc. may only be found liable to the plaintiff if it had notice of a defective condition on the sidewalk with sufficient time to remedy the condition prior the accident. Defendants allege that defendants had no notice of the condition prior to plaintiff's accident. Further, defendants state that the sidewalk in question was inspected twice a day, and any sidewalk mis-leveling would have been reported to the property manager, Orlando Torres. Defendants also argue that the sidewalk was used frequently by the New York City Police Department, the United States Marshall Service, and the Department of Homeland Security to park heavy tactical vehicles and that the sidewalk mis-leveling may have occurred in a single instance which would not have given defendants sufficient time to observe and repair the defect. Finally, defendants contend that the two-inch high, mis-leveled sidewalk slab is an open and obvious condition that defendants had no obligation to warn against.

Here, the defendants failed to meet their burden of establishing that, as a matter of law, they maintained the premises in a reasonably safe condition (*see Gradwohl,* 70 AD3d at 636). Although the defendants argued that the mis-leveled sidewalk was an open and obvious condition which was not inherently dangerous, under these circumstances, it cannot be

determined as a matter of law that the defendants are entitled to summary judgment dismissing the complaint (*see Shah v Mercy Med. Ctr.*, 71 AD3d 1120 [2010]; *Cooper v American Carpet & Restoration Servs., Inc.*, 69 AD3d 552 [2010]; *Mazzarelli v 54 Plus Realty Corp.*, 54 AD3d 1008 [2008]; *Salomon v Prainito*, 52 AD3d 803 [2008]). "The issue of whether a dangerous condition is open and obvious is fact-specific, and usually a question for a jury" (*Shah*, 71 AD3d at 1120).

Moreover, "[a] condition that is ordinarily apparent to a person making reasonable use of his or her senses may be rendered a trap for the unwary where the condition is obscured or the plaintiff is distracted" (*see Mazzarelli v 54 Plus Realty Corp.*, 54 AD3d 1008 [2008]). Here, triable issues of fact exist as to whether the mis-leveled sidewalk was an open and obvious condition.

In addition, the defendants failed to submit evidence establishing that no question of fact existed as to whether they lacked either actual or constructive notice of the mis-leveled sidewalk (*see Granillo v Toys "R" Us, Inc.*, 72 AD3d 1024 [2010]; *Molloy v Waldbaum, Inc.*, 72 AD3d 659 [2010]). The deposition transcript of property manager Orlando Torres, relied upon in support, indicated that staff does not inspect the sidewalk for height differentials, nor is there any criteria established to examine such (NYSCEF Doc. No. 121, p. 16).

Further, defendants have not demonstrated that Gerard J. Picaso, Inc. or Chatham Green Management Corp. escape liability because, as defendants state, they are "merely the manager of the premises". Defendants have failed to meet their burden on summary judgment and accordingly, their motion is denied.

Accordingly, it is hereby;

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that the parties appear for a remote conference via Microsoft Teams, link to be provided by the Park Clerk, scheduled on July 8, 2021, at 10:30 am.

4/30/2021
DATE

SHAWN TIMOTHY KELLY, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE