

**Ocher v Veyland**

2021 NY Slip Op 33351(U)

February 11, 2021

Supreme Court, Rockland County

Docket Number: Index No. 035816/2018

Judge: Sherri L. Eisenpress

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
RENEE E. OCHER,

*Plaintiff,*

**DECISION AND ORDER  
(Motion # 1)**

*-against-*

Index No.: 035816/2018

STEVEN J. VEYLAND and MARIA VEYLAND

*Defendants.*

-----X  
*Sherri L. Eisenpress, A.J.S.C.*

The following papers, numbered 1 to 6, were considered in connection with Defendant Maria Veyland’s (hereinafter “Ms. Veyland”) Notice of Motion for an Order, pursuant to Civil Practice Law and Rules § 3212, granting summary judgment in her favor, and dismissing the action against her:

**PAPERS**

**NUMBERED**

NOTICE OF MOTION/AFFIRMATION IN GOOD FAITH/AFFIRMATION IN SUPPORT/AFFIDAVIT OF MARIA VEYLAND/EXHIBITS A-E	1-4
AFFIRMATION IN OPPOSITION	5
AFFIRMATION IN REPLY	6

Upon the foregoing papers, the Court now rules as follows:

This action was commenced by Plaintiff with the filing of the Summons and Complaint on September 28, 2018. Issue was joined with the service of an Answer on November 6, 2018. Discovery was completed and the instant summary judgment motion was filed by Defendant Maria Veyland only. Plaintiff alleges that on July 30, 2017, she was invited into the Veyland’s townhouse, located at 22 Tulip Court, Nanuet, New York, in order to evaluate the property in preparation for it to be listed for sale on the market. Plaintiff alleges that she was caused to sustain injury when she fell as a result of a “hidden and unexpected step-down and height differential of the hardwood floor” in an office/guest room.

Defendant Ms. Veyland filed the instant Notice of Motion seeking an Order granting summary judgment and argues that there can be no finding of negligence against her because she was not the owner of the real property at which the accident happened and she did not cause or create the alleged condition which resulted in plaintiff's alleged injuries. In support of this contention, she submits her husband, Steven J. Veyland's, examination before trial transcript and her affidavit. Mr. Veyland testified that he purchased the townhome before he was married to Ms. Veyland and was the sole owner of the property. He further testified that the alleged defective condition was installed by the prior homeowner. In her affidavit, Ms. Veyland states that at the time of the occurrence she lived at 22 Tulip Court with her husband and two children; that it was purchased by her husband prior to her marriage; and that she had no ownership interest in the property. In opposition, Plaintiff argues that moving Defendant failed to demonstrate the absence of material fact requiring denial of the motion. Plaintiff asserts that while Ms. Veyland demonstrated that she was not the owner of the subject premises on the date of the accident, she failed to make any showing that she did not occupy, control, or incur a special use of the subject premises.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., et al., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving

party. Jacobsen v. New York City Health and Hospitals Corp., 22 N.Y.3d 824, 833, 988 N.Y.S.2d 86 (2014).

"It is fundamental that, in order to be held liable in tort, the alleged tortfeasor must have owed the injured party a duty of care." Forbes v. Aaron, 81 A.D.3d 876, 877, 918 N.Y.S.2d 188 (2d Dept. 2011). "As a general rule, liability for a dangerous or defective condition on property is predicated upon ownership, occupancy, control, or special use of the property." Tilford v. Greenburgh Hous. Auth. 170 A.D.3d 1233, 1235, 97 N.Y.S.2d 278 (2d Dept. 2019). "The existence of one or more of these elements is sufficient to give rise to a duty of care." Micek v. Greek Orthodox Church of Our Savior, 139 A.D.3d 830, 831, 31 N.Y.S.3d 189 (2d Dept. 2016). Liability can also be imposed upon a party that creates a dangerous condition on the property. *Id.*

In the instant matter, Defendant Maria Veyland's summary judgment motion must be denied. While Ms. Veyland clearly demonstrated that she neither owned the property nor created the alleged defective condition, she admits to occupying the property at the time of the accident and made no showing whatsoever with respect to the issues of control or special use. Because moving defendant did not meet her burden on summary judgment, the Court need not consider the sufficiency of the opposition papers.

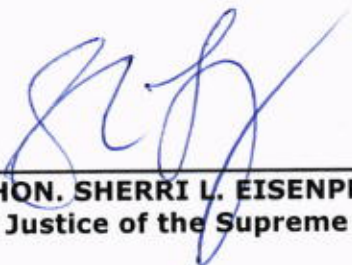
Accordingly, it is hereby

**ORDERED** the Notice of Motion filed by Defendant Maria Veyland is DENIED in its entirety; and it is further

**ORDERED** that all parties are to appear for a settlement conference on **March 26, 2021, at 10:30 a.m.** for a conference. Counsel participating in the settlement conference must have knowledge of the matter, as well as authority, and must make arrangements to be able to speak to their clients with respect to settlement offers, if necessary.

The foregoing constitutes the Decision and Order of this Court on Motion #1.

Dated: New City, New York  
February 11, 2021



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**HON. SHERRI L. EISENPRESS**  
Acting Justice of the Supreme Court

TO:

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