

Pope v Trotta

2021 NY Slip Op 33634(U)

August 12, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 603037/2017

Judge: George Nolan

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No.
603037/2017

SUPREME COURT – STATE OF NEW YORK
PART 55 - SUFFOLK COUNTY

P R E S E N T:

Hon. George Nolan
Justice Supreme Court

BLANCHE POPE, x

Plaintiff,

-against-

ALFONSO TROTТА, ROSE ANN TROTТА,
AL’S REPAIR CENTER, INC., 212 BANGOR
STREET CORP., LEO LASSITER and GLENDA
LASSITER,

Defendants.
_____ x

Mot. Seq. No. 009 - MG
Mot. Seq. No. 010 - MG
Orig. Return Date: 01/15/2021
Mot. Submit Date: 06/10/2021

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Upon the e-filed documents numbered 137 through 152, 154 through 167 and upon
due deliberation and consideration by the Court of the foregoing papers, it is hereby

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ORDERED that the following motions are consolidated solely for purposes of this decision and order and, as so consolidated, are determined as set forth hereinafter; and it is further

ORDERED that the motion (motion sequence no. 009) of the defendants Leo Lassiter and Glenda Lassiter for summary judgment dismissing the complaint as against them is granted; and it is further

ORDERED that the motion (motion sequence no. 010) of the defendants Al's Repair Center, Inc., and 212 Bangor Street Corp. for summary judgment dismissing the complaint as against them is granted.

Plaintiff Blanche Pope claims she was injured on January 29, 2015 when she was struck by a motor vehicle owned and operated by defendant Alfonso Trotta ("Trotta"). According to the submissions, plaintiff was walking on New Highway at or near its intersection with 41st Street in Copiague, New York when she was struck by a snow blade attached to the front of Trotta's vehicle. The defendants Leo Lassiter and Glenda Lassiter ("Lassiter") own and reside at 491 41st Street, Copiague, New York, premises located on the corner of New Highway and 41st Street. According to plaintiff, she was walking in the shoulder of the roadway because the sidewalk in front of the Lassiter residence was covered in snow.

Plaintiff commenced this action to recover damages for personal injuries against the Lassiters by filing a summons and complaint on February 16, 2017. Prior to this action, on November 18, 2015, plaintiff commenced an action in Queens County claiming personal injuries against defendants Alfonso Trotta and Rose Ann Totta and for a declaratory judgment to determine that Utica National Assurance Company owed insurance coverage to the Trottas, 212 Bangor Street Corp., and Al's Repair Center, Inc. for the within underlying personal injury action. By prior court Order (BUGGS, J.), the second and third causes of action seeking the declaratory judgment were severed from the personal injury claims. Thereafter, by So-Ordered stipulation filed on October 17, 2017, the matters pending in Queens County were transferred to Supreme Court Suffolk County and the two personal injury actions were consolidated. Plaintiff alleges that defendant Trotta was negligent in the operation of his motor vehicle and that defendants Al's Repair Center Inc., and 212 Bangor Street Corp. are vicariously liable for Trotta's actions. Plaintiff claims the defendant Lassiters were negligent in failing to clear the sidewalk of snow and ice which forced her to walk in the roadway.

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Defendants Lassiter now move for summary judgment dismissing the complaint as asserted against them arguing, *inter alia*, that the Town of Babylon Town Code does not impose liability upon an abutting landowner for a failure to remove snow and ice. The motion is unopposed.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). Once this showing has been made, the burden shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution (*see Alvarez v. Prospect Hosp.*, *supra*; *Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

A plaintiff seeking damages for personal injuries in a premises liability action must first establish, as a matter of law, that the defendant or defendants owed him or her a duty of reasonable care in maintaining the property (*see Rivera v. Nelson Realty, LLC*, 7 NY3d 530, 534, 825 NYS2d 422, 424 [2006]; *Tagle v. Jakob*, 97 NY2d 165, 168, 737 NYS2d 331, 333 [2001]; *Alnashmi v. Certified Analytical Group, Inc.*, 89 AD3d 10, 13, 929 NYS2d 620, 623 [2d Dept 2011]). Without this duty of reasonable care on the part of a defendant, there can be no breach of such duty and, therefore, no proximate cause of plaintiff's injuries as a result of the breach (*see Conneally v. Diocese of Rockville Ctr.*, 116 AD3d 905, 984 NYS2d 127 [2d Dept 2014]; *Ortega v. Liberty Holdings, LLC*, 111 AD3d 904, 976 NYS2d 147 [2d Dept 2013]; *Nappi v. Incorporated Vil. of Lynbrook*, 19 AD3d 565, 796 NYS2d 537 [2d Dept 2005]). As a general rule, liability for a dangerous condition on property must be predicated upon ownership, occupancy, control, or special use of the property (*see Reynolds v. Avon Grove Props.*, 129 AD3d 932, 12 NYS3d 199 [2d Dept 2015]; *Chernoguz v. Mirrer Yeshiva Cent. Inst.*, 121 AD3d 737, 994 NYS2d 362 [2d Dept 2014]; *Grover v. Mastic Beach Prop. Owners Assn.*, 57 AD3d 729, 869 NYS2d 593 [2d Dept 2008]). The owner or possessor of real property has a duty to maintain the property in a reasonably safe condition so as to prevent the occurrence of foreseeable injuries (*see Peralta v. Henriquez*, 100 NY2d 139, 760 NYS2d 741 [2003]; *Frank v. JS Hempstead Realty, LLC*, 136 AD3d 742, 24 NYS3d 714 [2d Dept 2016]; *Guzman v State of New York*, 129 AD3d 775, 10 NYS3d 598 [2d Dept 2015]).

Here, defendants Lassiter's submissions establish, *prima facie*, that the Town of Babylon Town Code does not impose liability on single family adjacent landowners for a failure to remove snow and ice. Unless a statute or ordinance "clearly imposes liability upon" an abutting landowner, only a municipality may be held liable for the negligent failure

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to remove snow and ice from a public sidewalk (*Roark v. Hunting*, 24 NY2d 470, 475, 301 NYS2d 59,[1969]; *Jacobs v. Pasquale*, 281 AD2d 891, 892, 721 NYS2d 887 [4th Dept 2001]). “An owner of property abutting a public sidewalk is under no duty to pedestrians to remove snow and ice that naturally accumulates on the sidewalk unless a statute or ordinance specifically imposes tort liability for failing to do so” (*Bi Chan Lin v. Po Ying Yam*, 62 AD3d 740, 741, 879 NYS2d 172 [2d Dept 2009; *Smalley v. Bemben*, 12 NY3d 751, 880 NYS2d 878 [2009]; *Hevia v. Smithtown Auto Body of Long Island, Ltd.*, 91 AD3d 822, 937NYS2d 284 [2d Dept 2012]).

Defendants Al’s Repair Center, Inc., and 212 Bangor Street also move for summary judgment alleging that the facts of the case demonstrate that defendant Trotta was not acting within the scope of his employment at the time of the accident and thus defendants Al’s Repair Center, Inc., and 212 Bangor Street cannot be held vicariously liable for Trotta’s actions. According to the submissions, Alfonso Trotta was the president of Al’s Repair Center, Inc, an auto repair shop located at 212 Bangor Street in Lindenhurst, New York. Defendant Rose Ann Trotta was the company’s sole shareholder. Defendant 212 Bangor Street owned the premises where Al’s Repair Center, Inc., is located. It is undisputed that Trotta was operating a 1989 GMC pickup truck which was registered in his name and not the name of his business. By prior Order (MOLIA, J.), this court determined in the related declaratory judgment action that at the time of the accident, Trotta was using the truck for his own personal use and purpose and not in furtherance of the of business of Al’s Repair Center, Inc., or 212 Bangor Street Corp. “An issue must be actually litigated for the law of the case doctrine . . . to apply” (*People v. Grasso*, 54 AD3d 180, 210, 861 NYS2d 627, 651 [1st Dept 2008]), and the doctrine applies only when “the parties had a full and fair opportunity to litigate the initial determination” (*PHH Mtge. Corp. v. Burt*, 176 AD3d 1242, 1243, 112 NYS3d 231, 233 [2d Dept 2019]).

Defendants having met their initial burden on the motion, the burden shifted to plaintiff to submit evidentiary proof, in admissible form, of issues requiring a trial for resolution (*see Alvarez v. Prospect Hosp.*, *supra*; *Zuckerman v. City of New York*, *supra*). Plaintiff does not oppose either motion and the defendant’s limited opposition fails to raise any triable issues of fact.

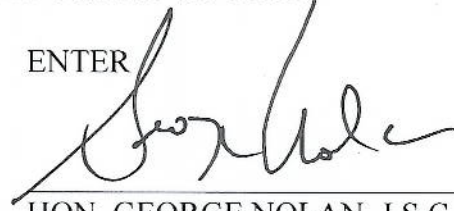
Accordingly, the motions for summary judgment dismissing the complaint as to defendants Leo Lassiter and Glenda Lassiter and defendants Al’s Repair Center, Inc., and 212 Bangor Street Corp., are granted.

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The foregoing constitutes the decision and Order of the Court.

ENTER



HON. GEORGE NOLAN, J.S.C.

Date: August 12, 2021
Riverhead, New York

 FINAL DISPOSITION

 x NON-FINAL DISPOSITION