

Hallback v City of New York

2022 NY Slip Op 34657(U)

September 21, 2022

Supreme Court, Bronx County

Docket Number: Index No. 34091/2018E

Judge: Mitchell J. Danziger

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

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NAQUAWN HALLBACK,

Index No.: 34091/2018E

Plaintiff(s),

DECISION/ORDER

-against-

Present:
HON. MITCHELL J. DANZIGER

CITY OF NEW YORK, et., al.,

Defendant(s).

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Recitation as Required by CPLR §2219(a): The following papers
were read on this Motion for Summary Judgment:

Papers Numbered

Notice of Motion, Affirmation in Support with Exhibits,	
Statement of Material Facts, Memo of Law.....	<u>1</u>
Affirmations in Opposition with Exhibits.....	<u>2</u>
Affirmation in Opposition	<u>3</u>
Reply Affirmations with Exhibits.....	<u>4, 5</u>

Motion by defendants, Dunkin’ Brands Group, Inc., Baskin-Robbins, LLC, and Castle Hill QSR, LLC (hereinafter “Dunkin”, “Baskin” and “QSR”) for an order pursuant to CPLR §3212 granting summary judgment and dismissing plaintiff’s complaint as against it, is decided as follows:

This is an action to recover damages for personal injuries sustained by plaintiff, Naquawn Hallback on September 28, 2018, when he tripped on the sidewalk area adjacent to the premises of 1285 Castle Hill Avenue, Bronx, New York. According to plaintiff’s testimony, he stepped over the curb and onto a red brick on the sidewalk. When he stepped on the red brick, it flipped. When the brick flipped, he almost fell, but caught his balance.

Defendants, Dunkin, Baskin, and QSR submit that they did not owe plaintiff a duty because they were not responsible for maintaining that portion of the sidewalk containing the complained of defect pursuant to New York City Administrative Code §7-210. Further, they are entitled to summary judgment because they aver they did not cause or create the dangerous condition and were not on notice of a dangerous condition.

Plaintiff opposes defendants’ motion on the grounds that there are material issues of fact that preclude summary judgment. Plaintiff contends that the moving defendants have not met their prima facie burden on the issue of lack of constructive notice and pursuant to their lease

with defendant, Jova Realty, LLC (“Jova”), the property owner, they were responsible to notify the owner of the dangerous condition and were obligated to remove it, as a loose brick may be “fairly said to have been debris.”

Defendant, Jova argues that the defendants have not met their prima facie burden that they were not responsible for the maintenance and repair of the sidewalk area in question; did not have notice of the subject defect prior to the date of loss; and did not cause or create the subject defect. Questions of fact preclude the defendants from prevailing on their motion for summary judgment.

A review of the lease indicates that pursuant to paragraph 29 of the Rider to the lease between the moving defendants and defendant, JOVA, that the landlord was responsible for all structural and exterior repairs and the tenant was responsible for keeping the sidewalk in front and on the side of the premises free from debris, snow, and ice. (Paragraph 36 of the Rider).

New York Administrative Code §7-210 imposes a non-delegable duty on the owner of the abutting premises to maintain and repair the sidewalk. Generally, a tenant owes no duty to a third party to maintain or repair an abutting sidewalk. (*Collado v. Cruz*, 81 A.D.3d 542 (1st Dept. 2011)). “Liability for injuries sustained as a result of dangerous condition on a public sidewalk is placed on the abutting owner or lessee if either: (i) affirmatively created the dangerous condition; (ii) voluntarily but negligently made repairs; (iii) caused the condition to occur through a special use; (iv) or violated a statute or ordinance expressly imposing liability on the landowner or lessee for a failure to maintain the abutting street.” (*Broderick v. Starbucks Corp.*, 2020 N.Y. Misc. LEXIS 9868, citing *Gibbs v Husain*, 184 AD3d 809, 127 N.Y.S.3d 42 [2d Dept 2020]; see also *Richter v Reade*, 303 AD2d 232, 757 N.Y.S.2d 16 [1st Dept 2003]; *Montalvo v Western Estates*, 240 AD2d 45, 669 N.Y.S.2d 562 [1st Dept 1998]). In the absence of facts or evidence that any of the forgoing apply to the moving defendants, they do not owe a duty of care to the plaintiff here. (*Kellogg v. All Sts. Hous. Dev. Fund Co., Inc.*, 146 A.D.3d 615 [1st Dept. 2017]). It is only when the lease agreement is “so comprehensive and exclusive” as to sidewalk maintenance as to entirely displace the landowner’s duty to maintain the sidewalk that a tenant may be liable to a third party. (*Paperman v. 2281 86th St. Corp.* [142 A.D.3d 540 [2nd Dept. 2016]). That is not the case here and as a result, the portion of the moving defendants motion seeking summary judgment dismissing plaintiff’s complaint as against them, is granted.

However, the portion of the moving defendants' motion seeking dismissal of the cross-claims is denied. Pursuant to the lease, the moving defendants had a responsibility to give the landlord notice of a dangerous and/or defective condition that required repair. (Paragraph 5 of the Lease). According to the moving defendants, they conducted daily and weekly sidewalk inspections and daily sidewalk sweeping, yet did not inform defendant, Jova of any issue involving the sidewalk and the bricks. As such, there is a question of fact as to whether or not the moving defendants had constructive notice of the subject defect and whether or not they were in violation of their lease by not informing defendant, Jova of the sidewalk condition.

Defendant, Jova's cross-claims as against the moving defendants are now converted to a third-party action and the clerk of the Court is directed to amend the caption as follows:

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NAQUAWN HALLBACK,

Plaintiff,

-against-

CITY OF NEW YORK and JOVA REALTY, LLC,

Defendants,

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JOVA REALTY, LLC,

Third-Party Plaintiff,

-against-

DUNKIN' BRANDS GROUP, INC., BASKIN-

ROBBINS, LLC and CASTLE HILL QSR, LLC,

Third Party Defendants,

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The moving defendants are directed to serve a copy of this order upon all parties with notice of entry within 30 days of the entry date hereof.

This constitutes the decision and order of this Court.

Dated:

9/21/22

Bronx, New York



HON. MITCHELL J. DANZIGER, J.S.C.