

Villeda v Board of Mgrs. of Jamaica E. Condominium

2023 NY Slip Op 31962(U)

June 12, 2023

Supreme Court, Queens County

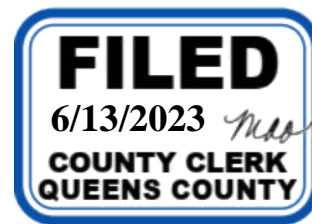
Docket Number: Index No. 717388/2018

Judge: Lourdes M. Ventura

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY**



PRESENT: HON. LOURDES M. VENTURA PART 37

Justice

-----X **INDEX NO.** 717388/2018

MARIA VILLEDA,

Plaintiff,

**MOTION
SEQ. NO.**

001

- v -

BOARD OF MANAGERS OF JAMAICA EAST
CONDOMINIUM and JAMAICA EAST
CONDOMINIUM,

Defendant(s).

ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that this motion is determined as follows:

Plaintiff Maria Villeda (“plaintiff Villeda”) commenced the above referenced action to recover for personal injuries allegedly sustained on August 15, 2017 when plaintiff tripped and fell on or at the sidewalk abutting a parking lot located on the premises known as 107-30 Guy R. Brewer Boulevard, Jamaica, New York 11433 owned or maintained by defendants.

Plaintiff filed this motion seeking an order pursuant to CPLR 3212, granting summary judgment on the issue of liability in favor of plaintiff and against defendants Board of Managers of Jamaica East Condominium and Jamaica East Condominium; and directing that the liability trial in this matter will only address the issue of plaintiff’s comparative negligence (if any). Plaintiff also avers that it is undisputed that the accident occurred at this location not only by virtue of the plaintiff’s testimony, but also by photographs taken on the date of accident which depict the plaintiff on the ground at this location immediately following the accident as well as the ambulance which picked plaintiff up at the accident location. Plaintiff further avers that defendants have admitted that they had actual notice of the raised sidewalk flag for over a year prior to the accident, and they themselves considered it to be a tripping hazard to pedestrians. Plaintiff further avers that both testimony and documentary evidence demonstrate that defendants made a down payment to a sidewalk contractor to repair the uneven sidewalk in July of 2016, over a year prior to the accident.

Defendants oppose plaintiff’s motion and avers that there are triable issues of fact warranting denial.

“To establish a prima facie case of negligence in a premises liability action, a plaintiff must demonstrate the existence of a dangerous or defective condition that caused his or her injuries, and that the defendant either created or had actual notice or constructive notice of the condition” (*Robert v Mahopac Cent. School Dist.*, 38 AD3d 514, 515 [2d Dept 2007]).

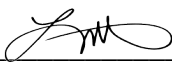
This court finds that plaintiff established the existence of a defective condition and the defendants had actual notice of the condition. Specifically, the president of condominium association testified during an examination before trial (“EBT”), that the concrete was moving up and the board was considering repairing the condition in the sidewalk and were aware of the defect in the sidewalk prior to the plaintiff’s incident.

In opposition, defendants failed to raise a triable issue of fact as to liability.

Based upon the foregoing, plaintiff’s motion is granted as to liability only, issues of comparative fault, if any, and damages shall be determined at the time of trial. Any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

Dated: June 12, 2023





HON. LOURDES M. VENTURA, J.S.C.