

Black v Huang

2023 NY Slip Op 33431(U)

October 4, 2023

Supreme Court, New York County

Docket Number: Index No. 152229/2018

Judge: Judy H. Kim

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

ANTICA BLACK,

Plaintiff,

- v -

PAUL HUANG, DANIEL STROUP, THE CITY OF NEW YORK,

Defendants.

-----X

INDEX NO. 152229/2018

MOTION DATE 08/24/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER).

In this negligence action, defendant the City of New York (the "City") moves for summary judgment dismissing plaintiff's complaint and all crossclaims against it. Plaintiff opposes the City's motion and cross-moves for summary judgment as to liability against defendants Paul Huang and Daniel Stroup. For the reasons set forth below, both motions are denied.

Plaintiff alleges that on December 16, 2016, she tripped over a raised sidewalk flag abutting the building located at 36 East 74th Street, New York, New York (the "Building"), causing her to fall, sustaining injuries (NYSCEF Doc. Nos. 34 [Compl. at ¶¶43, 60] and 53 [Black EBT at pp. 23-25]). Plaintiff asserts negligence claims against the City based upon its alleged failure to maintain the subject sidewalk flag as well as the tree well adjacent to that sidewalk flag (NYSCEF Doc. Nos. 37 and 52 [Bill of Particulars at ¶19]).

Plaintiff also asserts negligence claims against Huang, who owns the Building (along with his brother, Charles, who is not a party to this action), and Huang's domestic partner, Stroup.

The City now moves, pursuant to CPLR §3212, for summary judgment dismissing plaintiff's complaint and all crossclaims against it on the grounds that: (1) Huang and Stroup had the exclusive duty to maintain the subject sidewalk under Administrative Code §7-210, and (2) the City has established that it did not cause or create the subject defect. Plaintiff opposes the City's motion and cross-moves for summary judgment as to liability against Huang and Stroup, also relying upon Administrative Code §7-210. Both movants point to the examination before trial ("EBT") testimony of Huang and Stroup.

Huang testified that he used the Building as the business address for several companies, including a charitable foundation and several investment companies and "probably" received mail at the Building for these companies (NYSCEF Doc. No. 55 [Stroup EBT at pp. 43-47, 57-58])

Stroup testified that he is the founder and president of Shandee Music Festival Incorporated ("Shandee"), a not-for-profit corporation that organizes a classical music festival held every August in Livingston Manor, New York (NYSCEF Doc. No. 55 [Stroup EBT at pp. 10-14, 65-66]). Shandee was founded in 1997, and since that time has listed the Building as its corporate address.

During the fall, winter, and spring months, Stroup dedicates, at most, six hours per week in preparation for the Festival and approximately twenty hours per week in the summer months preceding the Festival in August, sending emails, correspondence, mailings, and invitations for the Festival and its fundraisers, writing checks, and coordinating with Shandee's employees, volunteers, and board members (*Id.* at pp. 16, 19, 57-61, 64, 76, 89).

Between the months of September and June, Shandee's website designates the Building as Shandee's mailing address for donations. Shandee's corporate records, including its tax returns, bank statements, checkbooks, permits, permit applications, contracts, insurance

agreements, articles of incorporation, and board meeting minutes, are kept and maintained at the Building in Stroup's home office (Id. at pp. 41, 46-56, 61-64). Stroup also received Shandeelee's tax returns, bank statements, and permits at the Building (Id. at pp. 47, 56).

Huang and Stroup oppose the City's motion, arguing that this use of the Building was incidental to their residential use and, as such, they remain within the exemption of Administrative Code §7-210(c).

DISCUSSION

"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 demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

Administrative Code §7-210 provides, in pertinent part,

Notwithstanding any other provision of law, the owner of real property abutting any sidewalk ... shall be liable for any injury to Building or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This subdivision shall not apply to one-, two- or three-family residential real Building that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

Notwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two- or three-

family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition...

(Administrative Code §7-210[b], [c] [emphasis added]).

In view of Administrative Code §7-210's limitation that only the owner of real property may be liable under the statute and the undisputed fact that Stroup is not an owner of the Building, the City's motion and plaintiff's cross-motion are denied as to Stroup. These motions are also denied as to Huang. The City argues that Huang's use of the Building as the business address for several companies and Stroup's use of the Building as the base of operations for the Shandeele Music Festival removes the Building from Administrative Code §7-210's protection for building's that are "used exclusively for residential purposes."

However, case law does not support the movants' narrow construction of "residential purposes." It is well-settled that Administrative Code §7-210(b) was drafted in recognition of "the inappropriateness of exposing small-property owners in residence, who have limited resources, to exclusive liability with respect to sidewalk maintenance and repair" (Coogan v City of New York, 73 AD3d 613, 614 [1st Dept 2010] [internal citations omitted]) and, in light of this purpose, courts define "residential purposes" to permit non-residential use that is "incidental" to the residential purpose of the dwelling (See Coogan v City of New York, 73 AD3d 613 [1st Dept 2010] [occasional use of laptop for research in home incidental to residential use]; DeBlasi v City of New York, 157 AD3d 656, 657-58 [2d Dept 2018] [defendant's use of dwelling to store son's landscaping equipment incidental to residential use of the property]). The Court concludes that Huang's use of the Building as, essentially, an address to receive mail from various investment vehicles qualifies as such incidental use (See Story v City of New York, 24 Misc 3d 325, 327 [Sup Ct, Kings County 2009] ["[w]here, as here, the property is used as a mail drop, at most, for the homeowners' son's law practice, the court finds that the exemption applies"]). Stroup's use

presents a slightly more complex question, though ultimately the Court reaches the same conclusion on this issue.

In light of the fact that, for the majority of the year, Stroup uses his home office for, at most, six hours per week on Shandelee business weighs heavily in favor of incidental use, even in light of the fact that his use increases to twenty hours per week—still a part-time “job”—for three months of the year and occasionally hosts fundraisers for Shandelee in the Building. Viewing these facts in the light most favorable to these individual defendants, the Court finds the parallel drawn by these defendants between the use here and that in Koronkevich v Dembitzer, 147 AD3d 916, 917 (2d Dept 2017), in which defendants’ partial use of his home’s basement as an office space to conduct summer camp business during the camp’s off-season was incidental, to be compelling.

Plaintiff’s efforts to analogize this case to Sisler v City of New York are not persuasive. In Sisler, the Appellate Division, First Department affirmed the trial court’s denial of defendant’s motion for summary judgment based on Administrative Code §7-210(b) because the undisputed facts established that defendant was using her home as the office for her commercial business—which generated substantial revenue—including processing orders, sending business-related faxes, and working on shoe designs, with two other employees also regularly working in her home (Sisler v City of New York, 84 AD3d 638 [1st Dept 2011]). The fact that the enterprise in Sisler earned substantial revenues and that defendant and two additional employees used her home as the exclusive administrative office for the business readily distinguishes that case from this one. The Court does not view the fact that both entities listed the residence as their place of business for corporate filings to be an important commonality, in light of these major differences¹.

¹ To the extent plaintiff notes that Shandelee’s tax filings include a deduction for office expenses, Stroup’s unequivocal testimony that any such deductions were not for his home office in the Building must be credited at this juncture.

Accordingly, plaintiff’s motion is denied. However, the Court declines defendants’ request, in their opposition, to search the record and grant them summary judgment dismissing this action as against them.

In light of the foregoing, it is

ORDERED that the City of New York’s motion for summary judgment is denied; and it is further

ORDERED that plaintiff’s cross-motion for summary judgment is denied; and it is further

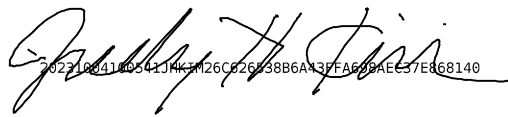
ORDERED that counsel for defendant the City of New York shall serve a copy of this decision and order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-filing” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

10/4/2023

DATE



HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE