

**Lewis v Related Broadway Dev., LLC**

2023 NY Slip Op 34393(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 155175/2018

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ADAM SILVERA PART 40**

*Justice*

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INDEX NO. 155175/2018

LAURA LEWIS,

MOTION DATE           

Plaintiff,

MOTION SEQ. NO. 001

- v -

RELATED BROADWAY DEVELOPMENT, LLC,RELATED  
MANAGEMENT, L.P.

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 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, 44, 45, 46, 47, 51, 52

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral arguments, it is ordered that defendants Related Broadway Development, LLC and Related Management Company, L.P.'s motion for summary judgment of dismissal and plaintiff Laura Lewis' cross-motion for summary judgment on the issue of liability are decided below.

Plaintiff commenced this personal injury action seeking monetary damages for injuries sustained as a result of a trip and fall on an alleged defect abutting the residential apartment building in which plaintiff resided. On May 21, 2018, plaintiff was finishing a jog when she tripped on a sidewalk slab diagonally bordering the tree well near the entrance of plaintiff's residential apartment building and fell, causing injuries.

Here, defendants move for summary judgment arguing that it had no notice of the alleged defect, and that there is no actionable defect at all. According to defendants, plaintiff resided in the abutting residential apartment since 2001 and did not report any defect in the sidewalk for

over seventeen (17) years prior to her accident in 2018. Defendants proffer, *inter alia*, the deposition transcripts of plaintiff as well as the deposition transcript of defendants' residential manager, Mr. Simon Camaj. Defendants further proffer photographs of the alleged defect. According to defendants, Mr. Camaj never noticed the defect, and the height differential would not rise to the level of an actionable defect.

Plaintiff cross-moves for summary judgment, and opposes defendants' motion, arguing that the defect in the sidewalk slab which caused her fall had a height differential of half an inch to an inch. Plaintiff also argues that, while there is video footage of the accident, such video footage has never been provided by defendants, and Mr. Camaj testified that he did not have possession of such video. Mr. Camaj, however, did testified that he viewed the video and that it showed plaintiff tripping on the sidewalk. Two additional employees of defendant residential building were deposed and both testified that they did not notice the defect. In support of her motion, plaintiff proffers the report of an engineer, Herman Silverberg, P.E., who states that he measured the height differential between the sidewalk slabs at issue herein to be 5/8ths of an inch. As such, plaintiff contends that the New York State Administrative Code §19-152 was violated, and that defendants have failed to maintain the sidewalk abutting their property in a reasonably safe condition as required by law. According to plaintiff, defendants had ample notice of the defect as all three (3) employees testified as to the location of the accident and walked by the defect daily. Plaintiff further argues that defendants' motion must be denied as they failed to meet their initial burden.

In reply, defendants argue that the Administrative Code is not a strict liability statute, and that plaintiff failed to disclose their expert at the time of discovery even though such expert had already been retained by plaintiff.

Summary judgment is a drastic remedy, only to be granted if the moving party sufficiently established that it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). “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 eliminate any material issues of fact from the case”. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). “In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility.” *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1<sup>st</sup> Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1<sup>st</sup> Dep’t 1990). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

Here, issues of fact exist regarding the height differential in the sidewalk slabs, and whether such differential was noticeable. Thus, issues of fact exist as to notice of the alleged defect. The Court notes that a review of the deposition transcripts reveals that plaintiff herself did not notice the defect for over 17 years. *See* Notice of Motion, Exh. E, Depo. Tr. of Laura Lewis, dated May 3, 2019, p. 27, ln. 24 – p.28, ln. 3. Thus, issues of fact exist sufficient to preclude summary judgment. Thus, the instant motion and cross-motion, both seeking summary judgment, are denied.

Accordingly, it is

ORDERED that defendants Related Broadway Development, LLC and Related Management Company, L.P.’s motion for summary judgment of dismissal is denied in its entirety; and it is further

ORDERED that plaintiff Laura Lewis' cross-motion for summary judgment on the issue of liability is denied in its entirety; and it is further

ORDERED that, within thirty days of entry, plaintiff shall serve a copy of this order upon all parties, together with notice of entry; and it is further

This constitutes the Decision/Order of the Court.

12/14/2023  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE