

Eliachova v 200 Corbin Owners Corp.

2023 NY Slip Op 34801(U)

July 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 509370/2019

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 (MOA) of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 24th day of July, 2023.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

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OLGA ELIACHOVA,

Plaintiff,

-against-

200 CORBIN OWNERS CORP., ARTHUR WIENER,
200 CORBIN PLACE, LLC and A.A.A. BRIGHTON
DENTAL CARE, P.C.,

Defendant.
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Index No.: 509370/2019

DECISION AND ORDER

Motion Sequence #4, #5

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	99-106, 108-124,
Opposing Affidavits (Affirmations).....	127-128, 130-132,
Reply Affirmation or Affidavit	136, 137

Upon the foregoing papers, and after oral argument, the Court finds as follows:

The instant action results from a trip and fall incident that allegedly occurred on February 28, 2019. Plaintiff, Olga Eliachova (hereinafter the "Plaintiff") allegedly injured herself when she purportedly tripped on the sidewalk abutting the premises known as 200 Corbin Place, Brooklyn, New York (the "Premises" or "Property"). Defendant 200 Corbin Owners Corp., (hereinafter "200 Corbin" or "Owner") is the purported owner of the Premises.

Defendants 200 Corbin and Arthur Weiner now move (motion sequence #4) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the Plaintiff's complaint as against Arthur Weiner, and to amend the caption to remove Arthur Weiner therefrom. The moving defendants contend that the Plaintiff's negligence claims against Weiner should be dismissed as he did not own the Property

and was not personally involved with sidewalk maintenance at the Premises. These defendants acknowledge that Mr. Weiner was as principal of non-party United Management Corp. In opposition, the Plaintiff opposes this motion and argues, without moving, that United Management should be added as a named Defendant.

Defendants, A.A.A. Brighton Dental Care, P.C. (hereinafter “Brighton Dental”) moves (motion sequence #5) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the Plaintiff’s complaint as against it. Brighton Dental contends that it is not liable for the Plaintiff’s injuries as a matter of law given that it was not responsible for the maintenance of the sidewalk at issue and did not cause or create the purported defect. In opposition, the Plaintiff opposes the motion and argues that the principal of Brighton Dental, Gennadiy Tsibelman, is the spouse of the purported principal of Defendant 200 Corbin, Anna Kryuchkova, and as a result the motion by Defendant Brighton Dental should be denied.¹

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it “should only be employed when there is no doubt as to the absence of triable issues of material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493, 787 N.Y.S2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d

¹ The Court notes that the Plaintiff’s opposition papers in relation to both motions were e-filed on September 20, 2022, nearly one year after Defendants Corbin and Weiner’s motion (motion sequence #4) was filed on September 24, 2021, and nearly ten months after Brighton Dental’s motion (motion sequence #5) was filed on November 24, 2021. The opposition papers are also violative of the stipulation of the parties dated February 15, 2022 (NYSCE Doc. 125). CPLR 2214(b) provides in pertinent part that “[a]nswering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served at least seven days before such time if a notice of motion served at least sixteen days before such time so demands; whereupon any reply or responding affidavits shall be served at least one day before such time.” See also established *Deutsche Bank Nat’l Tr. Co. v. McEnery*, 197 AD3d 1238, 1240, 154 N.Y.S.3d 99, 101 [2d Dept 2021]. The Plaintiff does not provide good cause for such lateness. Accordingly, the opposition is untimely and the motion is granted without opposition. Notwithstanding this, the Court will address the merits of the applications.

361, 364, 362 N.Y.S.2d 1341 [1974]. The proponent for summary judgment 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. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 610 N.Y.S.2d 50 [2d Dept 1994].

The Sidewalk Law

Sidewalk liability is covered by §7-210 of Administrative Code of City of N.Y. (hereinafter “the Sidewalk Law”). The Sidewalk Law provides in pertinent part that:

b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property 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 property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

c. 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. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.

Motion Sequence #4

Turning to the merits of the motion made by Defendants 200 Corbin and Arthur Weiner (motion sequence #4), these defendants rely primarily on the affidavit of Arthur Weiner, and the deposition testimony of Aziz Donuk for Defendant 200 Corbin. In his affidavit, Arthur Weiner states that he is the President of non-party United Management Corp. and that “[a]s of February 28, 2019 and prior thereto my involvement with the Premises, was not personal, but solely by virtue of my position as an Officer.” Mr. Weiner also stated that “[a]s of February 28, 2019; and prior thereto, I did not personally own, lease, operate, manage, maintain, supervise, inspect, control, repair, have a duty to maintain, contract in my personal capacity, breach any duty to maintain (in particular as I had no such duty to maintain) the subject Premises.” Mr. Weiner also stated that “I did not create any conditions (defective or otherwise) on any portion of the sidewalk abutting the subject premises.” Mr. Weiner argued that he acted only on behalf of United Management Corp., not in his personal capacity, and as a result, summary judgment should be granted dismissing any claims by the Plaintiff against him. *See Maltese v. Metro. Transportation Auth.*, 179 AD3d 780, 783, 118 N.Y.S.3d 57, 60 [2d Dept 2020]; *Ali v. Pacheco*, 19 AD3d 439, 440, 797 N.Y.S.2d 101, 102 [2d Dept 2005].

In opposition, the Plaintiff has failed to raise an issue of fact. The Plaintiff does not argue that Arthur Weiner was personally liable for the Plaintiff’s injuries, but rather that if United Management Corp. is the corporate entity involved in managing the Property it should be added as a party. Accordingly, the motion is granted and the complaint is dismissed as against Defendant Arthur Weiner. The Plaintiff has not moved to amend the complaint for the addition of United Management as a named Defendant.

Motion Sequence #5

Turning to the merits the motion made by Defendants Brighton Dental (motion sequence #5). Brighton Dental argues that it did not owe a duty to the Plaintiff to maintain or repair the sidewalk at issue and that it did not cause or create the purported defect. Moreover, Brighton Dental argues that the owner of the Property, Defendant 200 Corbin, was required to maintain the sidewalk and keep it in a reasonably safe condition. In support of its application, Brighton Dental relies primarily on the affidavit of Gennadiy Tsibelman. In his affidavit, Mr. Tsibelman states that “I am President of A.A.A. Brighton Dental, P.C. (hereinafter “A.A.A. Brighton”) and held this role at the time of Plaintiff’s alleged accident on February 28, 2019.” Mr. Tsibelman also stated that “A.A.A. Brighton never, at any time, had any ownership interest in either the building located at 200 Corbin Place, Brooklyn, New York or the ground level office from which it operated its dental practice.” Mr. Tsibelman also stated that “[t]he lease agreement does not call for A.A.A. BRIGHTON to perform any structural maintenance to the sidewalk.” Mr. Tsibelman also stated that “A.A.A. Brighton has never, at any time, repaired or attempted to repair any sidewalks/walkways abutting the building located at 200 Corbin Place, Brooklyn, New York.” Defendant Brighton Dental further argues that it is a landowner’s non-delegable duty under section 7-210 to maintain and repair a sidewalk adjacent to its Property. See *Xiang Fu He v. Troon Mgmt., Inc.*, 34 N.Y.3d 167, 174, 137 N.E.3d 469 [2019; see also *Gambino v. 475 Park Ave. S., LLC*, 197 AD3d 621, 150 N.Y.S.3d 235 [2d Dept 2021].

In opposition, the Plaintiff has failed to raise an issue of fact. The Plaintiff does not argue that Defendant Brighton Dental was responsible for maintaining the sidewalk pursuant to its lease with the owner of the Property, or that Brighton Dental may have caused and created the condition. Instead, the Plaintiff argues that the principal of Brighton Dental, Gennadiy Tsibelman, is the spouse of the purported principal of Defendant 200 Corbin Place, LLC., Anna Kryuchkova. However, even assuming, *arguendo*,

that this is true, this is not sufficient to raise an issue of fact as to the potential liability of Defendant Brighton Dental. The opposition is nothing more than mere speculation and conjecture. Accordingly, the motion is granted and the complaint is dismissed as against Defendant Brighton Dental.

Based upon the foregoing, it is hereby ORDERED as follows:

The motion by Defendants 200 Corbin and Arthur Weiner (motion sequence #4) is granted and the complaint is dismissed as against Defendant Arthur Weiner.

The motion by Defendants Brighton Dental (motion sequence #5) is granted and the complaint is dismissed as against Defendant Brighton Dental.

The action as against Arthur Weiner and Brighton Dental is severed and dismissed, and the caption will be amended as follows:

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OLGA ELIACHOVA,

Plaintiff,

Index No.: 509370/2019

-against-

200 CORBIN OWNERS CORP.,
200 CORBIN PLACE, LLC.,

Defendants.

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The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino, J.S.C.

2023 JUL 26 AM 9:46
KINGS COUNTY CLERK
FILED