

Chayevsky v City of New York
2023 NY Slip Op 35180(U)
March 28, 2023
Supreme Court, Richmond County
Docket Number: Index No. 150159/2022
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
KARINA CHAYEVSKY, Administrator of the Goods, Chattels
and Credits which were of EYNIKH LEYDERMAN, Deceased,
KARINA CHAYEVSKY, individually and BELLA
CHAYEVSKY,

Plaintiff,

-against-

CITY OF NEW YORK, NYC DEPARTMENT OF
TRANSPORTATION, WALTER GARVEY and JOANNE
GARVEY,

Defendants.
-----X

Part C-2
Present:
Hon. Orlando Marrazzo

DECISION AND
ORDER

Index No: 150159/2022
Motion No. 002

The following e-filed documents listed by NYSCEF as document numbers 28-39 (Motion 002)
were fully submitted on February 22, 2023.

Upon the foregoing, Defendants motion for summary judgment pursuant to CPLR § 3212
is granted.

This is an action to recover damages for personal injuries and the wrongful death of
plaintiff's decedent, Eynikh Leyderman from injuries sustained when she allegedly tripped and
fell on the sidewalk located in front of 538 Travis Avenue in Staten Island, New York.

Plaintiff sued both the City of New York as well as Walter Garvey and Joanne Garvey, the
parties who owned adjacent to the sidewalk where plaintiff allegedly fell.¹ The Garvey defendants
now move for summary judgment upon the grounds that they are exempt from statutory liability
under § 7-210 of the Administrative Code because the abutting property is an owner-occupied

¹ The claim against the City of New York was settled (NYSCEF Doc. No. 29).

two-family home. They also contend that they did not create the raised sidewalk condition, nor did they have actual or constructive notice of it.

Plaintiff opposes the motion, arguing that there has been no exchange of discovery and therefore this motion for summary judgment is premature. In addition, he submits evidence in the form of a check for \$1,000 paid out to the plaintiff by defendants' insurance carrier as evidence of negligence.

In support of their motion for summary judgment, defendant's Walter Garvey and Joanne Garvey submit affidavits that they have both owned the premises located at 538 Travis Avenue, in Staten Island, New York for approximately 39 years. They further state that the house is a mother-daughter residence, where Walter and Joanne Garvey live in the main portion of the house and their son lives in the apartment. They further state that no one has ever conducted any business of any kind from the home, including any e-business. The home has been used exclusively for residential purposes.

The Garveys also state that they or anyone on their behalf have been changes to the sidewalks abutting the residence. They do contend that at some point the City put in new sidewalks with ramps at the corners, but they were not involved in the work. They have not caused or contributed to any alleged sidewalk defect.

Plaintiff opposes the motion, arguing, inter alia, that the motion is premature as discovery has not been conducted.

On a motion for summary judgment, facts must be viewed 'in the light most favorable to the non-moving party' ” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). The proponent of the “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” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “Once this showing has been made ..., the burden shifts to the party opposing the motion ... 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 at 324; *see Zuckerman v City of New York*, 49 NY2d at 562).

An abutting homeowner is not liable for injuries sustained by a pedestrian as a result of a dangerous condition of the public sidewalk unless the homeowner created the condition or caused it through some special use, or unless a statute charges the homeowner with the responsibility to repair and maintain the sidewalk and specifically imposes liability upon the homeowner for injuries resulting from a violation of the statute (*see Solarte v. DiPalmero*, 262 AD 2d 477 [2nd Dept 1999]).

The only statutory provision imposing liability upon property owners in the City of New York for failing to repair and maintain the public sidewalks abutting their property is § 7-210 of the New York City Administrative Code, and that section specifically excludes owner-occupied exclusively residential premises of less than four families (*see Admin. Code* § 7-210 [b]).

Defendants’ affidavits provide prima facie proof that the dwelling is an owner-occupied residential two-family home, and that the sidewalk was neither altered nor repaired by them. The need for further discovery has not been established as plaintiff has not proffered any evidence to the contrary.

Accordingly, the defendants have made a prima facie showing that they are exempt from the statutory liability imposed by section § 7-210(b) of the Administrative Code of the City of

New York for the failure to maintain the sidewalk in a reasonably safe condition because her property is an owner-occupied two-family residence (see *Meyer v. City of New York, et. al.*, 114 AD3d [2d Dept 2014]; *Moreno v. Shanker*, 93 AD3d 829 [2d Dept 2012]).

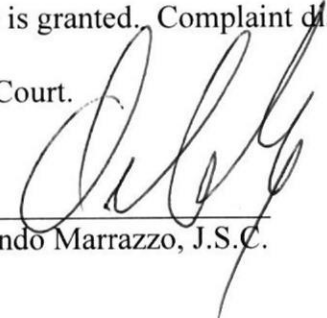
In opposition, the plaintiff has failed to raise an issue of fact. The submission of the check in the amount of \$1,000 for medical reimbursement from the Garvey's insurance carrier is not evidence of negligence. As the New York State Department of Financial Services Statement on Homeowner's Insurance reads, "if an incident occurs at your home and a guest is injured, your insurer will typically reimburse the injured person for necessary medical expenses up to a limit of \$500 to \$1,000 *regardless of whether your negligence caused the injury* (See NYCEF Doc No. 38). Therefore, the payment is not proof that defendants were in any way negligent.

The court has reviewed the remaining arguments and finds them to be unavailing.

Accordingly, it is

ORDERED that defendants Garveys' motion to dismiss is granted. Complaint dismissed.

The foregoing constitutes the decision and order of the Court.



Hon. Orlando Marrazzo, J.S.C.

Dated: March 28, 2023