

Prete v JJ Hoyt LLC

2024 NY Slip Op 32458(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 161724/2019

Judge: Richard G. Latin

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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. RICHARD G. LATIN PART 46M

Justice

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ALLISON PRETE, JOSEPH HAMERSKY

Plaintiff,

- v -

JJ HOYT LLC,

Defendant.

-----X

INDEX NO. 161724/2019

MOTION DATE 02/14/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing cited papers and after oral argument on the record, it is ordered that defendant’s motion for summary judgment is determined as follows:

Plaintiff and her husband brought this action for personal injuries against defendant JJ Hoyt LLC (“Defendant”) alleging that the property owner failed to maintain the sidewalk in a reasonably safe condition in violation of section 7–210 of the Administrative Code of the City of New York (NYSCEF # 1; NYSCEF # 64). Defendant moves for summary judgment dismissing the complaint (NYSCEF # 32). Plaintiffs oppose the motion (NYSCEF # 48).

Background

On February 15, 2009, Plaintiff Allison Prete (“Prete”) tripped and fell, sustaining personal injuries as a result of an allegedly defective condition on the public sidewalk in front of the premises known as 126 Hoyt Street, Brooklyn, New York owned by Defendant JJ Hoyt LLC (NYSCEF # 1 ¶ 2, 3, 14). Prete and her husband sued Defendant as owner of the sidewalk and of the premises to reasonably maintain the sidewalk in a reasonable safe manner as to not cause a

tripping hazard (*id.* ¶ 7). At the conclusion of discovery, Defendant filed a motion pursuant to CPLR 3212 granting summary judgement against Plaintiffs (NYSCEF # 32). In so moving, Defendant argues that Defendant is entitled to the homeowner's exception in NYC Administrative Code 7-210 and the alleged defect was not created by Defendant nor created by the special use of the side walk (NYSCEF # 47 at 2-10).

Plaintiffs oppose Defendant's motion (NYSCEF # 48). Plaintiffs advance two primary bases to argue that Defendant's motion should not be granted (NYSCEF # 64). First, Defendant does not fall under the homeowner's exception pursuant to NYC Administrative Code 7-210 because Defendant is a corporation, and thus cannot physically reside at the premises (*id.* at 9-13). Second, Plaintiffs aver that conflicting submissions of testimony and expert affidavits create triable issues of fact (NYSCEF # 64 at 20-22). The court finds in favor of the Defendant.

Discussion

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties 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 (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

NYC Administrative Code 7-210 Homeowner's Exemption

In 2003, Administrative Code of the City of New York § 7-210 was enacted to shift tort liability for injuries resulting from a defective sidewalk from the City to abutting property owners (*see Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 520 [2008]; *Gelstein v City of New York*, 153

AD3d 604, 605 [2017]; *Johnson v Manley*, 150 AD3d 1210, 1211 [2017]). In addition, section 7-210 unambiguously “imposes a nondelegable duty on certain real property owners to maintain City sidewalks abutting their land in a reasonably safe condition” (*Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 169 [2019]). Under this duty of care, a subject owner is liable for personal injury claims arising from the owner's negligence on maintaining the sidewalks (*id.*). Furthermore, the code makes no exception for out-of-possession landowners and so the duty applies with “full force notwithstanding an owner's transfer of possession to a lessee or maintenance agreement with a nonowner” (*id.*).

However, this provision does 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” (Administrative Code of City of NY § 7-210 [b]). “The purpose of the exception in the Code is to recognize the inappropriateness of exposing small-property owners in residence, who have limited resources, to exclusive liability with respect to sidewalk maintenance and repair” compared to holding more sophisticated parties liable such as companies (*Coogan v City of New York*, 73 AD3d 613, 614 [1st Dept 2010]). Defendant argues the homeowner’s exemption applies because the shareholders who hold ownership to JJ Hoyt LLC reside at the property. The court agrees.

Although the owner of the property is JJ Hoyt LLC and not an individual, § 7-210’s homeowner exemption would still apply (*see Gallis v 23-21 33 Rd., LLC*, 198 AD3d 730, 733 [2d Dept 2021]). § 7-210’s homeowner’s “exemption may apply to owners that are corporate entities, such as the LLC in this case” (*id.*, citing *Boorstein v 1261 48th St. Condominium*, 96 AD3d 703, 704 [2d Dept 2012]). The property in question must also be “limited to residential purposes” (*id.*). Here, Defendant provides sufficient evidence to support this claim, which plaintiffs fail to rebut with a triable issue of fact.

At this juncture, it is undisputed that the property falls under the “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” (§ 7-210 [b]). JJ Hoyt LLC’s owners, Justin Beal and Jane Hait, lived on the property since 2015 and have also rented out a portion of the apartment to another tenant for residential purposes (NYSCEF # 47 at 1; NYSCEF # 48 at 6; NYSCEF # 50 14-15). In addition, Defendant falls under the legislature's intent not to expose small property owners in residence to liability (*see Coogan*, 73 AD3d at 614). Here, despite the fact that Defendant is an LLC, the LLC is solely owned by Mr. Beal and Ms. Hait, who qualify as “small-property owners” under § 7-210 (NYSCEF 48 at 6). Although Plaintiff avers that JJ Hoyt LLC is the “owner,” the *Gallis* court established that the homeowner’s exemption may still apply to corporations (*see Gallis*, 198 AD3d at 733). Thus, because Defendant falls under § 7-210’s homeowner exemption, the court need not reach the parties’ additional arguments.


Conclusion

In view of the above, it is

ORDERED that Defendant’s motion for summary judgement dismissing the complaint is granted.

The Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

<p><u>7/12/2024</u> DATE</p>	 _____ RICHARD G. LATIN, J.S.C.															
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