

Abramova v City of New York

2024 NY Slip Op 34739(U)

July 2, 2024

Supreme Court, Queens County

Docket Number: Index No. 717874/2019

Judge: Chereé A. Buggs

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

Index No.:717874/2019

-----X
LARISA ABRAMOVA,

Motion Date: May 20, 2024

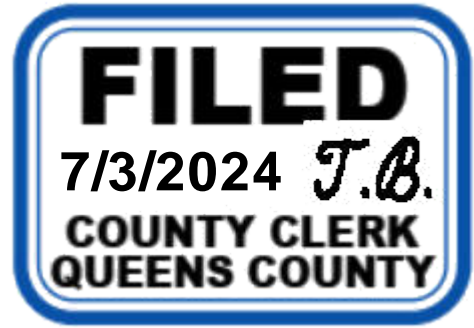
Plaintiff,

Motion Cal. No.: 2

-against-

Motion Sequence No.: 10

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, JEWISH
COMMUNITY CENTER OF QUEENS, INC., JEWISH
COMMUNITY OF QUEENS CONGREGATION ZICHRON
K'DOSHIM, GOLDEN EQUITIES CORP., I&R KOSHER
GROCERY, INC., NATIONAL GRID USA SERVICE
COMPANY. INC., THE BROOKLYN UNION GAS
COMPANY, d/b/a NATIONAL GRID NEW YORK,
AND CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.



Defendants.

-----X
GOLDEN EQUITIES CORP.,

Third-Party Plaintiff,

-against-

VERIZON NEW YORK INC.

Third-Party Defendant.

-----X
VERIZON NEW YORK INC,

Second Third-Party Plaintiff,

-against-

ALLSTATE SALES GROUP INC.,

Second Third-Party Defendant.

-----X

The following papers 273-284 submitted and considered by Defendant Jewish Community Center of Queens, Inc. seeking an Order pursuant to Civil Practice Law and Rules (CPLR) 3212 dismissing Plaintiff Larisa Abramova’s (hereinafter “Abramova”) complaint, all claims and counter-claims against it

Papers
Numbered

Notice of Motion-Affirmation in Support-
Affidavits-Exhibits..... EF 273-284

Relevant Factual and Procedural Background

This lawsuit stems from personal injuries allegedly sustained by Abramova as a result of a trip and fall accident on December 9, 2018, on the sidewalk of 66th Avenue, between 99th and 102nd Street, adjacent to the premises located at 65-47 99th Street, occupied by Defendant I & R Glatt Kosher Grocery (hereinafter “I&R”). Movant, Jewish Community Center, Inc. is located at 99-07 66th Avenue in Queens, and is a synagogue serving the residents of the community in a religious capacity. Movant is located next adjacent to Glatt Kosher Market, which is owned by co-defendant I & R.

Now, movant seeks an Order pursuant to CPLR 3212 dismissing Abramova’s complaint, and all claims and counterclaims against it on the grounds that it is not the owner of the property whereupon Abramova claimed that she was injured. In addition to the pleadings, movant’s documentary evidence included a bargain and sale deed for the property, a certified survey, as well as photographs and party deposition transcripts. Abramova testified on February 23, 2021 that the hole she fell into was near a “yellow Con Edison thing” located in front of a building with a red wall, which in this litigation has now been identified as the Glatt Kosher Market, which is owned by I & R.

LAW AND APPLICATION

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*See Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985].) Summary judgment eliminates cases from the Court’s trial calendar which can be properly resolved by the Court as a matter of law (*see Andre v Pomeroy*, 35 NY2d 361 [1974]). As summary judgment is a drastic remedy, it should not be granted where there is doubt about the existence of any issues (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]).

In this premises liability litigation, for a defendant to be held liable, it must be demonstrated that a duty of care was owed to the Plaintiff (*see Palka v Servicemaster Mgt. Servs. Corp.*, 83 NY2d 579, 584 [1994]; *Suero-Sosa v Cardona*, 112 AD3d 706 [2d Dept 2013]). “As a general rule, liability for a dangerous or defective condition on real property must be predicated upon ownership, occupancy, control, or special use of that property.” (*See Calabro v Harbour at Blue Point Home Owners Assn., Inc.*, 120 AD3d 462 [2d Dept 2014]; *see also Puzhayeva v City of New York*, 151 AD3d 988 [2d Dept 2017]; *Sanchez v 1710 Broadway, Inc.*, 79 AD3d 845 [2010]; *Gover v Mastic Beach Prop. Owners Assn.*, 57 AD3d 729 [2 Dept 2008]; *Balsam v Delma Eng’g Corp.*, 139 AD2d 292 [1st Dept 1988]; *Minott v City of New York*, 230 AD2d 791 [2d Dept 1996]). If none of these factors are present, a Defendant cannot be held liable for injuries caused by a dangerous or defective condition on the premises (*Id.*). New York City Administrative Code § 7-210 provides:

a. It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition.

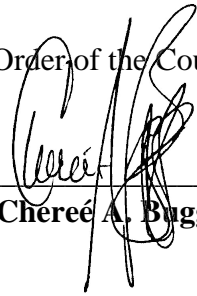
b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner 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.

Movant demonstrated on its papers its entitlement to judgment as a matter of law. (*See Alvarez v Prospect Hospital*, 68 NY2d 320 [1986].) No opposition papers have been received by this Court.

Therefore, Defendant Jewish Community Center of Queens, Inc.’s motion seeking an Order pursuant to CPLR 3212 dismissing Plaintiff Larisa Abramova’s complaint, all claims and counter-claims against it is granted without opposition in its entirety.

The foregoing constitutes the decision and Order of the Court.

Dated: July 2, 2024



Hon. Chereé A. Buggs, JSC

