

Mardokh v Williams

2025 NY Slip Op 31631(U)

April 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 533555/2022

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York 11201 on the 27th day of April, 2025

PRESENT: Hon. Carolyn E. Wade, J.S.C.

CAROLINE MARDOKH,

Plaintiff,

-against-

DONALD W. WILLIAMS, THOMAS M. HOEY, JR., VIRGINIA L. HOEY, THOMAS M. HOEY, III AS TRUSTEE OF THOMAS M. & VIRGINIA L. HOEY TRUST and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Defendants.

Index No. 533555/2022

DECISION AND ORDER

Mot. Seq. 002

Defendant DONALD W. WILLIAMS' (hereinafter "WILLIAMS") Motion for Summary Judgment, Motion Seq. 002 (NYSCEF Doc. Nos. 57-73) seeks an Order (1) pursuant to New York Civil Procedure Law and Rules ("CPLR") § 3212 granting Defendant WILLIAMS summary judgment and dismissing Plaintiff's Verified Complaint and all Cross-Claims in their entirety, with prejudice, and (2) for such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Both Plaintiff CAROLINE MARDOKH (hereinafter "MARDOKH") and Defendant CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (hereinafter "CON ED") opposed WILLIAMS' Motion (NYSCEF Doc. Nos. 88, 89, 92-114, 138, 139, 141-144), respectfully requesting that this Court deny WILLIAMS' Motion in its entirety and grant such

other relief as the Court deems just and proper.

STATEMENT OF FACTS

This action seeks damages for personal injuries allegedly sustained by Plaintiff in two separate accidents. *See* Plaintiff's Amended Complaint (NYSCEF Doc. No. 12).

Plaintiff allegedly tripped and fell on November 5, 2021, on a defective, broken, cracked, raised, unlevelled and uneven sidewalk located in front of 392 and 394 Sterling Place in Brooklyn, New York, which were owned by defendants THOMAS M. HOEY, JR., VIRGINIA L. HOEY, THOMAS M. HOEY, III AS TRUSTEE OF THOMAS M. & VIRGINIA L. HOEY TRUST (hereinafter "HOEY") and WILLIAMS, respectively. *Id.*

She then had a subsequent accident on March 8, 2022, when she allegedly slipped and fell on an accumulation of ice pellets on the sidewalk and driveway located in front of and adjacent to the Defendant CON ED'S "Third Avenue Yard Service Center Flush Truck Facility" on Third Street near the corner of 4th Avenue in Brooklyn, New York. *Id.*

In its Verified Answer to Plaintiff's Amended Complaint and Cross-Complaint, defendant CON ED alleges that "any liability to the plaintiff(s) against the defendant, [CON ED], will have arisen in whole or in part out of the negligent acts of the defendant(s)..." *See* NYSCEF Doc. No. 12 ¶ 7. However, it is important to note that "[t]here are no allegations that WILLIAMS had any involvement in plaintiff's second accident of March 8, 2022." *See* NYSCEF Doc. No. 59 ¶. 7.

As such, WILLIAMS' request for relief herein applies solely to the November 5, 2021, accident.

ANALYSIS

Upon a reading of the foregoing papers, and all other papers and proceedings in this action,

and after oral argument, Defendant WILLIAMS' Motion is decided as follows:

Summary judgment is "a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues." *Andre v. Pomeroy*, 35 N.Y.2d 361, 363 [1974]. Further, "summary judgment should be denied even when the existence of a factual issue is arguable." *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 398 [1957].

Here, there are triable issues of fact as to whether WILLIAMS is exempt from liability under New York City Administrative Code § 7-210, which provides that:

- a) It shall be the duty of the owner of real property abutting any sidewalk . . . to maintain such sidewalk in a reasonably safe condition.
- b) Notwithstanding any other provision of law, the owner of real property abutting any sidewalk... shall be liable for any . . . personal injury . . . 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 . . .
See NYC ADMIN. CODE §7-210.

As set forth below, WILLIAMS failed to establish, *prima facie*, that the subject premises, 394 Sterling Place, is a four-family dwelling, rather than a two-family dwelling, which precludes applicability of the 7-210(b) exemption. Rather, there is evidence to suggest that the subject premises was not a one-, two- or three-family dwelling at the time that WILLIAMS purchased the property. *Id.*

Further, WILLIAMS failed to establish, *prima facie*, that the subject premises was exclusively used for residential purposes, thereby failing to demonstrate that he did not have a

statutory duty to maintain the sidewalk abutting the property. *Brachfield v. Sternlicht*, 202 A.D.3d 742, 163 N.Y.S.3d 533 [2nd Dept. 2022]; *Aracena v. City of New York*, 136 A.D.3d 717, 25 N.Y.S.3d 266 [2nd Dept. 2016]. Rather, there is evidence to suggest that WILLIAMS' wife, Carleater Shuler-Williams, profited from a notary business (which included services such as typing and booking) conducted at the residence.

Lastly, WILLIAMS failed to establish, *prima facie*, that he neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. *Nisimova v. City of New York*, 145 A.D.3d 1023, 45 N.Y.S.3d 129 [2nd Dept. 2015]; *see Vasquez v. Giandon Realty, LLC*, 189 A.D.3d at 1120, 133 N.Y.S.3d 840 2nd Dept. 2019]. Rather, there is evidence to suggest that WILLIAMS's wife was aware of the hazardous condition prior to plaintiff's alleged accident on November 5, 2021.

As such, there are issues of fact to be determined by a jury.

Accordingly, it is hereby **ORDERED** that Defendant WILLIAMS' Motion for Summary Judgment is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: April 21st, 2025
Brooklyn, New York

ENTER



Honorable Carolyn E. Wade, J.S.C.

Hon. Carolyn E. Wade
Supreme Court Justice

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