

**Wooding v MN Cottage BR Inc.**

2025 NY Slip Op 34129(U)

October 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 510761/2024

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 510761/2024  
Motion Date: 10-14-25  
Mot. Seq. No.: 2, 3

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JOAN V. WOODING,

Plaintiff,

-against-

**DECISION/ORDER**

MN COTTAGE BR INC.,

Defendant.

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The following papers, which are e-filed with NYCEF as items 41-81, were read on these motions:

In this action to recover damages for personal injuries, Defendant MN COTTAGE BR INC. moves in Motion Sequence (Seq.) #2, pursuant to CPLR § 3212, for an order granting summary judgment dismissing Plaintiff JOAN V. WOODING's Complaint in its entirety, with prejudice. In Motion Seq. #3, Plaintiff JOAN WOODING moves for an Order: (a) pursuant to CPLR § 3212, granting summary judgment on the issue of liability against Defendant MN COTTAGE BR INC.; (b) pursuant to CPLR § 3211 and/or § 3212, striking Defendants' affirmative defenses of comparative fault/culpable conduct; (c) together with such other and further relief as this Court deems just and proper. The motions are consolidated for disposition.

**BACKGROUND**

This action arises from a trip-and-fall incident that allegedly occurred on December 18, 2022, on the public sidewalk abutting the premises located at 512 East 23rd Street, Brooklyn, New York (the "premises"). At his deposition, Mizanur Rahman, who testified on behalf of Defendant MN COTTAGE BR INC. (hereinafter "MN COTTAGE"), stated that at the time of the accident, MN COTTAGE was the titled owner of the premises. He maintained that the property is a three-floor, two-family residence. He claimed that he and his wife, Afrina Sharmin, formed MN COTTAGE in October 2022 in order to secure a mortgage to purchase the property for their family to reside in. The deed was transferred from the corporation to Rahman and Sharmin in January 2024, after the accident. Notably, Mr. Rahman is in the real estate management business and owns several properties.

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Mr. Rahman testified that when MN COTTAGE purchased the premises, the in October 2022, the property was "very old, damaged, dilapidated, vacant and was unlivable." He decided that renovations were necessary, which began immediately after purchase. He maintained that no one resided at the property between October 2022 and March/April 2023, when he and his family moved in upon completion of the renovations.

During his deposition, Mr. Rahman described the interior renovations as "light, little," consisting of "painting and kitchen updating," thus creating a triable issue of fact as to the condition of the property upon purchase. Mr. Rahman also testified that he visited the premises almost every day during this period and was the person responsible for daily maintenance.

Plaintiff JOAN V. WOODING testified at her deposition that the accident occurred between 12:00 p.m. and 1:00 p.m. on a sunny day as she walked past the subject premises, looking straight ahead at a normal pace. She stated that she stubbed her toe on a raised portion of the sidewalk. She estimated the vertical height differential between the sidewalk flags to be one inch. A photograph authenticated by Plaintiff, which was shown at her deposition, depicts the raised sidewalk flag with a measuring tape confirming the one-inch differential. Plaintiff had walked this route weekly but had not seen the defect prior to the accident.

In support of the motion, Plaintiff submitted a Google Maps photograph dated November 2020 (two years prior to the accident) that purportedly depicts the same elevated sidewalk condition (Pl. Ex. F).

## **DISCUSSION**

### **Motion Seq. #2 (Defendant's Motion for Summary Judgment)**

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact” (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 45 N.Y.S.3d 864, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]).

Administrative Code of the City of New York Section 7–210, which became effective September 14, 2003, "shifted tort liability for injuries arising from a defective sidewalk from the City of New York to the abutting property owner" (*Pevzner v. 1397 E. 2nd, LLC*, 96 A.D.3d 921, 922, 947 N.Y.S.2d 543; see *Blaise v. Guleria*, 197 A.D.3d 689, 690, 150 N.Y.S.3d 587). This provision directs landowners to maintain their abutting sidewalks in a "reasonably safe condition" (see *Sangaray v. West Riv. Assoc., LLC*, 26 N.Y.3d 793, 797, 28 N.Y.S.3d 652, 48 N.E.3d 933). This Code provision, however, 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 Section 7–210[b]; see *Blaise v. Guleria*, 197 A.D.3d at 690, 150 N.Y.S.3d 587; *Brown v. City of New York*, 162 A.D.3d 733, 734–735, 79 N.Y.S.3d 255). A defendant is entitled to the exemption from liability set forth in Administrative Code of the City of New York Section 7–210(b) regardless of whether the defendant is a corporation (*Boorstein v. 1261 48th St. Condo.*, 96 A.D.3d 703, 703–04, 946 N.Y.S.2d 200, 201–02 (2012)).

Here, the Defendant failed to establish, *prima facie*, that the premises were, in whole or in part, owner occupied at the time of the accident and therefore failed to show that they did not have a statutory duty to maintain the abutting sidewalk (see *Brachfield v. Sternlicht*, 202 A.D.3d 742, 743, 163 N.Y.S.3d 533, 535). While the exception may apply where a defendant temporarily relocates from the premises to accommodate renovation work (*Moreno v. Shanker*, 93 A.D.3d 829, 830, 941 N.Y.S.2d 216, 218; 12), in this case, Mr. Rahman and his family never moved into the premises prior to the accident.

Assuming, *arguendo*, that the statutory exemption applies upon a showing that the principals of a corporation intended to occupy the premises following renovations (an issue the Court need not reach), the evidence submitted did not establish such intent as a matter of law. The Defendants' sole evidence of intent is the self-serving deposition testimony of Mr. Rahman. Considering that Mr. Rahman may be viewed as a sophisticated real estate investor who owns multiple properties and that renovations that were taking place at the time of the accident were not extensive and would have not prevented Mr. Rahman and his family from moving in on the date of purchase, when Mr. Rahman and his family actually formed the intent to reside in the premises cannot be decided as a matter of law.

Those branches of Defendant’s motion for summary judgment on the grounds that the accident was caused by a trivial defect and that the Defendant lacked constructive notice of the alleged defect are denied. On the record before the Court, there are triable issues of fact as to whether the alleged defect was trivial and whether the Defendants had constructive notice of the defect.

**Motion Sequence #3 (Plaintiff’s Motion for Summary Judgment)**

Plaintiff’s motion for summary judgment is also denied. As stated above, the Court finds that on the record before it, there are triable issues of fact as to whether the alleged defect was trivial in nature. Further, there are triable issues of fact as to whether the plaintiff’s own negligence in failing to look where she was going contributed to the accident.

For the above reasons, it is hereby

**ORDERED** that the motions are in all respects denied.

This constitutes the decision and order of the Court.

Dated: October 22, 2025

**PPS**

**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK  
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