Black v Huang
2026 NY Slip Op 32114(U)
May 4, 2026
Supreme Court, New York County
Docket Number: 152229/2018
Judge: Gerald Lebovits

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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ANTICA BLACK,

Plaintiff,

- v -

PAUL HUANG, DANIEL STROUP, and THE CITY OF NEW YORK,

Defendants.

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INDEX NO. 152229/2018

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114

were read on this motion for SUMMARY JUDGMENT.

The Bongiorno Law Firm, PLLC, Garden City, NY (Brandon M. Cruz of counsel), for plaintiff.
Cuomo, LLC, New York, NY (Steven R. Engrassia of counsel), for defendants Paul Huang and Daniel Stroup.

Gerald Lebovits, J.:

In this trip-and-fall personal-injury action, defendants Paul Huang and Daniel Stroup move under CPLR 3212 for summary judgment dismissing the claims against them of plaintiff, Antica Black. The motion is granted.

BACKGROUND

On December 16, 2016, plaintiff tripped and fell on a raised sidewalk flag abutting the townhouse located at 36 East 74th Street in Manhattan. Black claims that she sustained serious physical injuries as a result of the fall. At the time of the incident, the townhouse property was owned by defendant Peter Huang and occupied by Huang and his domestic partner, defendant Daniel Stroup ("Moving Defendants").

On March 13, 2018, Black brought this action against Huang and Stroup. Black is asserting negligence claims against these defendants under Administrative Code § 7-210, alleging that their failure to maintain the sidewalk caused her injuries. Black contends that Huang and Stroup operated several entities from the premises, including a charitable foundation and several investment companies, and therefore the property was not "used exclusively for residential purposes" within the meaning of Administrative Code § 7-210.[1]

Huang and Stroup now move for summary judgment dismissing the complaint. They argue that the property qualifies for the homeowner exemption set forth in Administrative Code § 7-210 because it was used exclusively for residential purposes. Alternatively, Stroup moves for summary judgment on the ground that he is not an owner of the property and therefore cannot be held liable under Administrative Code § 7-210.

DISCUSSION

Administrative Code § 7-210 shifts liability for injuries "resulting from a defective sidewalk from the City to abutting property owners." (*Brown v City of New York,* 162 AD3d 733, 734-735 [2d Dept. 2018]; *accord Vucetovic v Epsom Downs, Inc.,* 10 NY3d 517, 520 [2008]; *Johnson v Manley*, 150 AD3d 1210, 1211 [2d Dept. 2017].) The statute provides an exception for "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 the City of New York § 7-210 [b].) Limited or incidental business activity conducted within a residence does not necessarily defeat the homeowner exemption where the overall character of the property remains residential.

1. As a threshold matter, summary judgment should be granted in Stoup's favor. Administrative Code § 7-210 imposes liability exclusively on owners of abutting residential property. It is undisputed that Stroup does not hold an ownership interest in the subject property. Accordingly, as a matter of law Stroup cannot be held liable to Black under Section § 7-210.

2. With respect to Black's claims against Huang, she argues that a triable issue of fact exists about whether the property was used exclusively for residential purposes. Black relies on the fact that Huang used the premises as a mailing address for several business entities, and that Stroup regularly conducted work from a home office and hosted fundraising events for his charitable organization, Shandelee Music Festival Incorporated (Shandelee). Black contends that the regular use of home-office space in the apartment, even if limited, disqualifies Huang and Stroup from the homeowner exemption; and that where a business is not "totally passive," summary judgment in favor of the property-owner must be denied. (*See Castillo v City of New York,* 2023 NY Misc. Lexis 42719 1, 4 [Sup Ct, Queens County 2023].) This court disagrees.

Huang's use of the property as a mailing address for his private investment entities and his family's nonprofit organization constitutes incidental use and does not give rise to an issue of fact about whether Huang comes within the homeowner exemption. The record reflects that Huang's business activity at the premises was limited to receiving and storing mail on behalf of those entities: Correspondence was delivered to the residence and stored in cardboard boxes in the basement. (NYSCEF No. 100 at 46-47.) This kind of passive, administrative use does not

[1] Black also brought negligence claims against the City of New York, asserting negligence claims based on the alleged failure to maintain the sidewalk flag and the adjacent tree well in a reasonably safe condition pursuant to RCNY § 2-01. Those claims have since settled.

[* 2]

transform a residence into a commercial property. (*See Story v. City of New York*, 24 Misc 3d 325, 327 [Sup Ct, Kings County 2009] ["[W]here, as here, the property used as a mail drop, at most, for the homeowner's son's law practice, the court finds that the exemption applies."]; *see also Matter of Town of New Castle v Kaufman*, 72 NY2d 684, 687 [1988] [finding that a property was used exclusively for residential purposes because "there was no business use other than a mail listing and a sign"].) The manner in which Huang stored mail, in cardboard boxes in the basement rather than in any dedicated commercial space, further emphasizes that he did not conduct any active business operation at the property. Accordingly, Huang's passive use of the residence as a mailing address does not give rise to an issue of fact about whether he is (or is not) entitled to § 7-210's homeowner exemption.

3. That Stroup regularly used space in the apartment as a home office to perform administrative tasks for Shandelee does not give rise to an issue of fact about whether the property's character is residential for purposes of the homeowner exemption. The regularity of Stroup's use does not, by itself, transform incidental activity into commercial, rather than residential use. The relevant inquiry is whether the property was being operated as a place of business, not merely whether some work regularly occurred there. Stroup's conduct fails to meet that threshold.

Stroup spent approximately six hours a week—just over one hour per weekday—using the apartment to perform administrative tasks such as reviewing contracts, sending emails, and making phone calls for Shandelee. (NYSCEF No. 101 at 55, 58-61.) Stroup did not claim a home-office tax deduction, no employees or third parties worked from the premises, and no business operations were conducted there in any commercially meaningful sense. The presence of some remotely conducted administrative tasks at a private residence does not alter its fundamental character as a home. This is precisely the type of activity that is incidental to residential use and insufficient to defeat the homeowner exemption. (*See Yokpaisarn v City of New York,* 2024 NY Misc. LEXIS 19651, at *4 [Sup Ct, Queens County 2024] ["[I]n a post-COVID world where many employees continue to work from home, the Court's refusal to entitle homeowners to the benefits of § 7-210 would have potentially disastrous results and could prevent what the statute sought to implement in the first instance."].)

This conclusion is consistent with appellate precedents concluding that limited home-office activity and minor administrative tasks do not defeat the homeowner exemption, as long as the overall character of the property remains residential and business activity conducted at the premises is subordinate to that residential purpose. (*See Koronkevich v Dembitzer*, 147 AD3d 916, 917 [2d Dept. 2017] [finding that defendants had made a prima facie showing because "[t]he defendants did not claim the home office as a tax deduction, their home address was only used to receive the camp's mail during the off-season, and they did not use the office space with any regularity"]; *see also Zak v City of New York,* 192 AD3d 374 [1st Dept. 2021] [holding that a retired photographer who occasionally edited photos two or three times per year on his home computer was incidental to his residential use where he did not claim a home office tax deduction, and did not use the space to edit photos with any regularity].)

Stroup's business-related activities in the premises fall far short of the intensity of commercial use that courts have found will take premises outside the homeowner exemption. In

Sisler v City of New York (84 AD3d 638, 639 [1st Dept 2011]), for example, the Court denied the exemption when defendant used the home office as the principal office for a commercial enterprise, processed orders, sent invoices, and employed staff who regularly worked from the residence. Courts have similarly declined to apply the exemption when the property was actively used to generate rental income, finding that such use reflects a commercial purpose fundamentally inconsistent with "exclusive" residential use. (*See Vucetovic v Epsom Downs, Inc.,* 10 NY3d 517, 520 [2008]; *accord Mic Gen. Ins. Corp v Cabrera,* 2021 U.S Dist. LEXIS 237023, at *19 [S.D.N.Y Dec. 10, 2021] [holding that the use of a property to generate rental income was not a use "exclusively for residential purposes"].) No comparable indicia of commercial operation are present here. Stroup was not running a business from the property, employing staff, processing transactions, or generating income from the residence. The property remained, in both character and use, a private home.

The homeowner exemption was designed to protect ordinary residents from liability for sidewalk conditions abutting their homes, not to penalize them for the incidental and inevitable reality that modern life sometimes brings work inside the home. (*See Coogan v City of New York,* 73 AD3d 613, 614 [1st Dept 2010] [finding that the homeowner exemption was drafted in recognition of "the inappropriateness of exposing small-property owners in residence, who have limited resources, to exclusive liability with respect to sidewalk maintenance and repair"].) Nearly every resident occasionally answers an email, takes a work call, or performs some administrative task from home. To strip a property owner of the exemption on that basis would render it meaningless, effectively excluding anyone who volunteers from home, works remotely one day a week, or performs any other truly incidental activity at their residence. Stroup was using the residence as a place to live, not a place to conduct business. Construing the homeowner exemption to exclude such ordinary residential use would be inconsistent with both its text and purpose.

Black contends, though, that Stroup's deposition testimony reflects that his use of the premises for Shandelee-related purposes increased to approximately 20 hours a week during the summer season, undercutting defendants' contention of strictly limited non-residential use of the premises. (*See* NYSCEF No. 110 at ¶ 42.) Black argues that that the representation in Stroup's affirmation that he only did six hours a week of work on the premises should be disregarded as crafted to avoid the consequences of his deposition testimony. (*See id.* at ¶ 55.) This argument is unpersuasive.

A party's later affidavit or affirmation will be disregarded on a motion for summary judgment when it "contradicts [his or] her prior sworn testimony" and appears to be tailored solely to avoid dismissal. (*Pippo v. City of New York,* 43 AD3d 303, 304 [1st Dept. 2007].) Stroup's affirmation does not contradict his deposition, but instead clarifies it.

In the exchange from Stroup's deposition on which Black relies, Black's counsel did not ask Stroup how many hours a week he would work in the premises on Shandelee-related business during the summer months, but how many hours a week he would work *in Manhattan*. (*See* NYSCEF No. 101 at Tr. 89.) Stroup's representation in his affirmation that his "volunteer work took place through Manhattan and not solely at the single-family residence located at 36 East 74th Street" (NYSCEF No. 105 at ¶¶ 10-11) is consistent with (and make more precise) his deposition testimony. Black does not point to other evidence that might undercut that representation. Volunteer activity conducted elsewhere in Manhattan has no bearing on whether the particular property at issue was used for non-residential purposes.

Accordingly, it is

ORDERED that defendants Huang and Stroup's CPLR 3212 motion for summary judgment dismissing the claims against them is granted, and plaintiff's complaint is dismissed as against defendants Huang and Stroup; and it is further

ORDERED that moving defendants serve a copy of this order with notice of its entry on all parties and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall grant judgment accordingly.

5/4/2026
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
	X	GRANTED		DENIED	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE