

2021 WL 3378799

Supreme Court, Appellate Division,
Second Department, New York.

Lakiesha ROBINSON, appellant,

v.

HESS RETAIL STORES, LLC, et al., respondents.

2019-09991

|
(Index No. 508031/16)|
Argued—May 6, 2021|
August 4, 2021**Attorneys and Law Firms**

Subin Associates, LLP, New York, N.Y. (Robert J. Eisen and Pollack, Pollack, Isaac & DeCicco, LLP [Christopher Soverow], of counsel), for appellant.

Cullen and Dykman LLP, Garden City, N.Y. (Nicholas M. Cardascia of counsel), for respondents.

REINALDO E. RIVERA, J.P., ROBERT J. MILLER,
BETSY BARROS, VALERIE BRATHWAITE NELSON, JJ.**DECISION & ORDER**

*1 In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Devin P. Cohen, J.), dated July 24, 2019. The order, insofar as appealed from, denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained when she tripped and fell on a hole in a sidewalk abutting the defendants' premises in Brooklyn. The plaintiff moved, inter alia, for summary judgment on the issue of liability, contending that the defendants were negligent in failing to maintain the abutting sidewalk in a reasonably safe condition and that they

had notice of the defective condition. The Supreme Court denied that branch of the motion, and the plaintiff appeals.

“Administrative Code of the City of New York § 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 *Vucetovic v. Epsom Downs, Inc.*, 10 N.Y.3d 517, 520, 860 N.Y.S.2d 429, 890 N.E.2d 191). Administrative Code of the City of New York § 7-210(a) “imposes a duty upon owners of certain real property to maintain the sidewalk abutting their property in a reasonably safe condition, and provides that said owners are liable for personal injury that is proximately caused by such failure” (*Sangaray v. West Riv. Assoc., LLC*, 26 N.Y.3d 793, 797, 28 N.Y.S.3d 652, 48 N.E.3d 933; see *Xiang Fu He v. Troon Mgt., Inc.*, 34 N.Y.3d 167, 171, 114 N.Y.S.3d 14, 137 N.E.3d 469). “However, Administrative Code of the City of New York § 7-210 does not impose strict liability upon the property owner, and the injured party has the obligation to prove the elements of negligence to demonstrate that an owner is liable” (*Muhammad v. St. Rose of Limas R.C. Church*, 163 A.D.3d 693, 693, 81 N.Y.S.3d 131; see *Xiang Fu He v. Troon Mgt., Inc.*, 34 N.Y.3d at 171, 114 N.Y.S.3d 14, 137 N.E.3d 469). Thus, to prevail on a motion for summary judgment, a plaintiff must demonstrate, prima facie, that the property owner created the defect or had actual or constructive notice of the defect (see *Vasquez v. Giandon Realty, LLC*, 189 A.D.3d 1120, 133 N.Y.S.3d 840; *Kabir v. Budhu*, 143 A.D.3d 772, 773, 40 N.Y.S.3d 136).

*2 Here, the plaintiff failed to establish, prima facie, that the defendants created the defect or had actual or constructive notice of the defect (see *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 501 N.Y.S.2d 646, 492 N.E.2d 774). Contrary to the plaintiff's contention, the affidavit of her expert, who never visited the accident site and relied on Google images of the accident scene, which were poor in quality, was insufficient to demonstrate, prima facie, that the defendants had constructive notice of the defect (see *Rios v. New York City Hous. Auth.*, 48 A.D.3d 661, 662, 852 N.Y.S.2d 283; *Avella v. Jack LaLanne Fitness Ctrs., Inc.*, 272 A.D.2d 423, 707 N.Y.S.2d 678; see also *Gennaro v. Cord Meyer Dev. Co. & LLC*, 57 A.D.3d 725, 726, 871 N.Y.S.2d 214). Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability without regard to the sufficiency of the opposition papers (see *Winegrad v. New*

York Univ. Med. Ctr., 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316,
476 N.E.2d 642).

All Citations

--- N.Y.S.3d ----, 2021 WL 3378799 (Mem), 2021 N.Y. Slip
Op. 04625

RIVERA, J.P., MILLER, BARROS and BRATHWAITE
NELSON, JJ., concur.

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