

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

Etimos v. Casa Bella Property Management, LLC

Etimos, 2025 NY Slip Op 07282 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2025) · No. 2023-11760 · Decided December 24, 2025

SUMMARY

The Appellate Division, Second Department reversed an order denying defendants' CPLR 3211(a) motion to dismiss a personal-injury complaint arising from a sidewalk accident. The court held that documentary evidence, including deeds, established that individual homeowners—not the defendants—owned the real property abutting the sidewalk. Because the duty to maintain the sidewalk under Administrative Code § 7-210 arises from abutting-property ownership, the court granted dismissal.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Barry E. Warhit, J.; Lourdes M. Ventura, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 24, 2025
DOCKET	2023-11760
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order denying their CPLR 3211(a) motion to dismiss a personal-injury complaint.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, dismissal is warranted when documentary evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense as a matter of law. On a CPLR 3211(a)(7) motion, the court liberally construes the pleading, accepts its factual allegations as true, affords the plaintiff every favorable inference, and determines whether the alleged facts fit within a cognizable legal theory; where evidentiary material is submitted without conversion to summary judgment, the criterion is whether the plaintiff has a cause of action.

PRECEDENTIAL VALUE	published
PARTIES	Casa Bella Property Management, LLC, Stonecrest Homeowners Association, Dome Property Management v. Elias Etimos

TOPICS

premises liability personal injury negligence motions to dismiss appellate procedure

PRACTICE AREAS

torts premises liability civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether documentary evidence established as a matter of law that the defendants did not own the real property abutting the sidewalk.
2. Whether the defendants could be liable for the alleged sidewalk condition under Administrative Code of the City of New York § 7-210 when they did not own the abutting property.
3. Whether the complaint should be dismissed under CPLR 3211(a)(1) and CPLR 3211(a)(7).

HOLDINGS

1. Deeds and other evidentiary material demonstrating that the individual homeowners, rather than the defendants, owned the real property abutting the sidewalk utterly refuted the complaint's ownership allegations and conclusively established a defense as a matter of law.
2. The duty to maintain a public sidewalk under Administrative Code § 7-210 arises from ownership of the real property abutting the sidewalk; defendants who did not own the abutting property therefore could not be held liable on the pleaded sidewalk-maintenance theory.

KEY QUOTATIONS

*“Furthermore, this showing also demonstrated that the plaintiff had no cause of action, as the duty to maintain a public sidewalk arises from ownership of abutting real property” (*2)*

*“Under CPLR 3211(a)(1), a dismissal is warranted only if ‘the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law’” (*1)*

FACTUAL BACKGROUND

On June 26, 2021, Etimos allegedly tripped over a defective sidewalk flag adjoining homes in the Stonecrest Court housing development and sustained personal injuries. The Stonecrest Homeowners Association was responsible for maintaining the development's common elements and had retained Casa Bella Property Management, LLC, as property manager. Etimos alleged that the defendants owned the properties abutting the sidewalk and were negligent in maintaining it, but deeds submitted by defendants showed that the individual homeowners owned the abutting property.

PROCEDURAL HISTORY

Elias Etimos sued the defendants for injuries allegedly sustained when he tripped over a defective sidewalk flag. The Supreme Court, Kings County, denied defendants' motion to dismiss the complaint. The Appellate Division reversed and granted the motion.

DISPOSITION

reversed

CASES CITED

- Russo v. Crisona, 219 AD3d 920, 922
- Goshen v. Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326
- Fontanetta v. John Doe 1, 73 AD3d 78, 84-85
- Xia-Ping Wang v. Diamond Hill Realty, LLC, 116 AD3d 767, 768
- Breytman v. Olinville Realty, LLC, 54 AD3d 703, 703-704
- Langley v. Melville Fire Dist., 213 AD3d 748, 750
- Rovello v. Orofino Realty Co., 40 NY2d 633, 636
- Rosin v. Weinberg, 107 AD3d 682, 683
- Guggenheimer v. Ginzburg, 43 NY2d 268, 275
- Xiang Fu He v. Troon Mgt., Inc., 34 NY3d 167, 173-174
- Sangaray v. West Riv. Assoc., LLC, 26 NY3d 793, 795

OPINION

PER CURIAM.

Etimos v Casa Bella Prop. Mgt., LLC (2025 NY Slip Op 07282) Etimos v Casa Bella Prop. Mgt., LLC 2025 NY Slip Op 07282 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. BARRY E. WARHIT LOURDES M. VENTURA JAMES P. MCCORMACK, JJ. 2023-11760 (Index No. 523866/22) [*1]Elias Etimos, respondent, v Casa Bella Property Management, LLC, et al., appellants. Landman Corsi Ballaine & Ford P.C., New York, NY (Tina S. Bhatt and Daniel J. Tarolli of counsel), for appellants.

Pavlounis & Sfougataakis, LLP (The Altman Law Firm PLLC, Woodmere, NY [Michael T. Altman], of counsel), for respondent. DECISION & ORDER In an action to recover damages for

personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Francois A. Rivera, J.), dated November 14, 2023.

The order denied the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint. ORDERED that the order is reversed, on the law, with costs, and the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint is granted.

On June 26, 2021, the plaintiff allegedly tripped over a defective sidewalk flag and fell, sustaining personal injuries. The subject sidewalk (hereinafter the sidewalk) abutted the back of certain homes within a housing development known as Stonecrest Court.

The defendant Stonecrest Homeowners Association (hereinafter the Association) was responsible for maintaining the common elements of the housing development. The Association retained the defendant Casa Bella Property Management, LLC, to maintain said common elements as of March 1, 2020, replacing its prior property manager, the defendant Dome Property Management.

The plaintiff commenced this action to recover damages for personal injuries against the defendants, alleging that the defendants owned the properties abutting the sidewalk and that the plaintiff's fall was the result of the defendants' negligence in maintaining the sidewalk.

The defendants moved pursuant to CPLR 3211(a) to dismiss the complaint, arguing, among other things, that they did not own the abutting real property and, therefore, had no duty to maintain the sidewalk. The Supreme Court denied the motion.

The defendants appeal. "Under CPLR 3211(a)(1), a dismissal is warranted only if 'the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law'" (*Russo v Crisona*, 219 AD3d 920, 922, quoting *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326). "[J]udicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case" (*Fontanetta v John Doe 1*, 73 AD3d 78, 84-85 [internal quotation marks omitted]). "On a motion to dismiss [a] complaint pursuant to CPLR 3211(a)(7) for failure to [*2]state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Xia-Ping Wang v Diamond Hill Realty, LLC*, 116 AD3d 767, 768, quoting *Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703-704).

"Evidentiary material submitted by the plaintiff in opposition to such a motion may be considered to remedy defects in the complaint" (*Langley v Melville Fire Dist.*, 213 AD3d 748, 750; see *Rovello v Orofino Realty Co.*, 40 NY2d 633, 636).

However, "[w]here a defendant has submitted evidentiary material in support of a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion has not been converted to one for summary judgment (cf. CPLR 3211[c]), the criterion is whether the [plaintiff] has a cause of action, not whether he [or she] has stated one, and, unless it has been shown that a material fact as claimed by the [plaintiff] to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it... dismissal should not eventuate" (Xia-Ping Wang v Diamond Hill Realty, LLC, 116 AD3d at 768 [internal quotation marks omitted], quoting Rosin v Weinberg, 107 AD3d 682, 683; see Guggenheimer v Ginzburg, 43 NY2d 268, 275).

As applicable here, the Administrative Code of the City of New York § 7-210(b) provides that "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." "Prior to the effective date of section 7-210, New York City was liable for all personal injuries caused by the negligent failure to properly maintain the sidewalks.

Section 7-210 'was enacted for the purposes of transferring tort liability from the City to certain adjoining property owners as a cost-saving measure'" (Xiang Fu He v Troon Mgt., Inc., 34 NY3d 167, 173-174, quoting Sangaray v West Riv. Assoc., LLC, 26 NY3d 793, 795).

Here, the defendants submitted evidentiary material, including deeds, in support of their motion, demonstrating that the individual homeowners within the housing development owned the real property abutting the sidewalk. This showing utterly refuted the plaintiff's factual allegations that the defendants owned the real property abutting the sidewalk, thereby conclusively establishing a defense as a matter of law (see Goshen v Mutual Life Ins.

Co. of N.Y., 98 NY2d at 326). Furthermore, this showing also demonstrated that the plaintiff had no cause of action, as the duty to maintain a public sidewalk arises from ownership of abutting real property (see Administrative Code § 7-210(a); Xiang Fu He v Troon Mgt., Inc., 34 NY3d at 173; see also Xia-Ping Wang v Diamond Hill Realty, LLC, 116 AD3d at 768).

Accordingly, the Supreme Court should have granted the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint. The parties' remaining contentions either are without merit or need not be reached in light of our determination. DILLON, J.P., WARHIT, VENTURA and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

Etimos v Casa Bella Prop. Mgt., LLC (2025 NY Slip Op 07282) Etimos v Casa Bella Prop. Mgt., LLC 2025 NY Slip Op 07282 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

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