

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