

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

Cordova v. Union Turnpike Development Corp.

75 A.D.3d 573 (2d Dep't 2010) · Decided July 20, 2010

SUMMARY

The plaintiff appealed an order granting summary judgment to defendants in a personal-injury action arising from a trip-and-fall caused by a hole in a sidewalk near a construction site. The Appellate Division reversed, holding that the defendants failed to meet their initial burden of showing the absence of triable issues concerning whether they created or had notice of the sidewalk defect.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Fisher, J.P.; Covello, J.; Hall, J.; Sgroi, J.
JURISDICTION	New York
DECIDED	July 20, 2010
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing the complaint insofar as asserted against them.
STANDARD OF REVIEW	On a motion for summary judgment, the movant bears the initial burden of demonstrating entitlement to judgment as a matter of law by eliminating any material issues of fact. If the movant fails to meet that burden, the sufficiency of the opposing papers need not be examined.
PRECEDENTIAL VALUE	published
PARTIES	Cordova v. Union Turnpike Development Corp., Junction Blvd. Towers, Inc., Boston Construction Corp.

TOPICS

- premises liability
- personal injury
- summary judgment
- standard of review
- appellate procedure

PRACTICE AREAS

premises liability

personal injury

construction law

civil procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment based on their contention that they did not create or have actual or constructive notice of the defective sidewalk.
2. Whether the Supreme Court should have considered the sufficiency of the plaintiff's opposing papers after defendants failed to meet their initial summary-judgment burden.

HOLDINGS

1. Summary judgment was improper because defendants failed to meet their initial burden of demonstrating the absence of triable issues of fact regarding whether they created or had actual or constructive notice of the defective sidewalk.
2. The court need not examine the sufficiency of the plaintiff's opposing papers when the moving defendants fail to meet their initial burden for summary judgment.

FACTUAL BACKGROUND

The plaintiff allegedly sustained personal injuries after tripping and falling because of a hole in a sidewalk. Construction work was occurring near the sidewalk, and the plaintiff alleged that heavy machinery and trucks traversed the sidewalk to access the construction site. The defendants argued that they neither created the defect nor had actual or constructive notice of it.

PROCEDURAL HISTORY

The Supreme Court, Queens County, granted the defendants' motion for summary judgment. The Appellate Division reversed the order and denied the motion, concluding that defendants failed to meet their initial burden of demonstrating the absence of triable issues of fact.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Supreme Court's order was reversed, and defendants' motion for summary judgment dismissing the complaint was denied.

CASES CITED

- Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324 (1986)
- Winegrad v. New York University Medical Center, 64 N.Y.2d 851 (1985)

OPINION

PER CURIAM.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Agate, J.), dated May 8, 2009, which granted the motion of the defendants Union Turnpike Development Corp., Junction Blvd. Towers, Inc., and Boston Construction Corp. for summary judgment dismissing the complaint insofar as asserted against them.

Ordered that the order is reversed, on the law, with costs, and the motion of the defendants Union Turnpike Development Corp., Junction Blvd. Towers, Inc., and Boston Construction Corp. for summary judgment dismissing the complaint insofar as asserted against them is denied.

The plaintiff allegedly sustained personal injuries when she tripped and fell due to a hole in a sidewalk. At the time of the accident, construction work was taking place near the subject *574sidewalk. The plaintiff alleged that heavy machines and trucks traversed the subject sidewalk to gain access to the construction site.

The respondents moved for summary judgment, contending only that they did not create or have actual or constructive notice of the alleged defect. The Supreme Court granted the motion. We reverse. The respondents failed to meet their initial burden of demonstrating the absence of any triable issues of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Contrary to the respondents' contention, triable issues of fact exist as to whether the respondents created or had actual or constructive notice of the defective sidewalk. In light of this determination, we need not examine the sufficiency of the plaintiffs opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Accordingly, the Supreme Court should have denied the respondents' motion for summary judgment. Fisher, J.P., Co vello, Hall and Sgroi, JJ., concur.