

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

Sharpe v. Ulrich Development Co.

52 A.D.3d 1319 (N.Y. App. Div. 2008) · Decided June 13, 2008

SUMMARY

The court reversed an order denying summary judgment to the owners of a building in a premises-liability action arising from a trip on a sidewalk. It held that the sidewalk defect was too trivial to be actionable as a matter of law and dismissed the complaint against the defendants.

CASE DETAILS

|                       |                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, Fourth Department                                                                               |
| WRITING FOR THE COURT | Martoche, J.P.; Smith, J.; Centra, J.; Lunn, J.; Pine, J.                                                                                                         |
| JURISDICTION          | New York                                                                                                                                                          |
| DECIDED               | June 13, 2008                                                                                                                                                     |
| DISPOSITION           | reversed                                                                                                                                                          |
| PROCEDURAL POSTURE    | Defendants appealed from an order denying their motion for summary judgment dismissing the personal-injury complaint.                                             |
| STANDARD OF REVIEW    | Whether defendants established entitlement to judgment as a matter of law on summary judgment and whether plaintiff raised a triable issue of fact in opposition. |
| PRECEDENTIAL VALUE    | Published appellate opinion                                                                                                                                       |
| PARTIES               | Ulrich Development Company, LLC, 111 Main Street, LLC v. Sharpe                                                                                                   |

TOPICS

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

PRACTICE AREAS

- premises liability
- personal injury
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

- Whether the sidewalk defect was too trivial to be actionable as a matter of law.

2. Whether plaintiff raised a triable issue of fact sufficient to defeat defendants' motion for summary judgment.

#### **HOLDINGS**

1. The sidewalk defect was too trivial to be actionable as a matter of law.
2. Plaintiff failed to raise a triable issue of fact, so summary judgment dismissing the complaint was proper.

#### **FACTUAL BACKGROUND**

Bonnie Lou Sharpe allegedly tripped and fell on a sidewalk while entering a building where she had worked for two years. She used the entrance at issue approximately half the time and did not identify a raised sidewalk condition as the cause of her fall until returning to the scene later. She testified that the sidewalk height differential was one inch or less and that the weather was clear, sunny, and warm. The court examined photographs and considered the width, depth, and irregularity of the sidewalk defect together with the time, place, and circumstances of the accident.

#### **PROCEDURAL HISTORY**

Plaintiff commenced a personal-injury action after allegedly tripping and falling on a sidewalk while entering a building owned by defendants. Supreme Court, Niagara County, denied defendants' motion for summary judgment. The Appellate Division unanimously reversed, granted the motion, and dismissed the complaint against defendants.

#### **DISPOSITION**

reversed

#### **CASES CITED**

- Stylianou v Ansonia Condominium, 49 A.D.3d 399 (2008)
- Zalkin v City of New York, 36 A.D.3d 801 (2007)
- Trionfero v Vanderhorn, 6 A.D.3d 903, 904 (2004)
- Mishaan v Tobias, 32 A.D.3d 1000, 1001-1002 (2006)
- Billera v Paolangeli, 20 A.D.3d 743, 745 (2005)
- McKenzie v Crossroads Arena, 291 A.D.2d 860 (2002), leave to appeal dismissed, 98 N.Y.2d 647 (2002)
- Zuckerman v City of New York, 49 N.Y.2d 557, 562 (1980)

#### **OPINION**

#### **PER CURIAM.**

Appeal from an order of the Supreme Court, Niagara County (Frank Caruso, J.), entered May 24, 2007 in a personal injury action. The order, insofar as appealed from, denied the motion of defendants Ulrich Development Company, LLC and 111 Main Street, LLC for summary judgment

dismissing the complaint against them. It is hereby ordered that the order insofar as appealed from is unanimously reversed on the law without costs, the motion is granted and the complaint against defendants Ulrich Development Company, LLC and 111 Main Street, LLC is dismissed.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by Bonnie Lou Sharpe (plaintiff) when she allegedly tripped and fell on the sidewalk while entering the building where she had been employed for two years.

We conclude that Supreme Court erred in denying the motion of Ulrich Development Company, LLC and 111 Main Street, LLC (collectively, defendants), the owners of the building, for summary judgment dismissing the complaint against them. Plaintiff testified at her deposition that she used the entrance at issue approximately half the time when entering and exiting the building, and she did not determine that “a raise in the sidewalk” caused her to fall until she returned to the scene some unspecified time after her fall.

Plaintiff further testified that the height differential in the blocks of the sidewalk was one inch or less, the weather on the day of her fall was clear, sunny and warm, and she and a coworker were the only people entering the building at that time.

After examining the photographs depicting the width, depth and irregularity of the defect in the sidewalk, and in view of the time, place and circumstances of plaintiffs injury, we conclude that defendants established as a matter of law that the defect is too trivial to be actionable (see e.g. *Stylianou v Ansonia Condominium*, 49 AD3d 399 [2008]; *Zalkin v City of New York*, 36 AD3d 801 [2007]; *Trionfero v Vanderhorn*, 6 AD3d 903, 904 [2004]; cf. *Mishaan v Tobias*, 32 AD3d 1000, 1001-1002 [2006]; *Billera v Paolangeli*, 20 AD3d 743, 745 [2005]; *McKenzie v Crossroads Arena*, 291 AD2d 860 [2002], lv dismissed 98 NY2d 647 [2002]).

We further conclude that plaintiffs failed to raise a triable issue of fact in opposition to the motion (see generally *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Present—Martoché, J.P, Smith, Centra, Lunn and Pine, JJ.