

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

1. 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)