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Trawinski v. Jabir & Farag Properties, LLC

Supreme Court, Appellate Division, Second Department, New York - October 25, 2017 - N.Y.S.3d - 154 A.D.3d 991 - 2017 WL 4799442 - 2017 N.Y. Slip Op. 07479

Pedestrian, who suffered injuries when she fell on sidewalk, brought personal injury action against city and city department of transportation alleging that they negligently designed sidewalk.

The Supreme Court, Kings County, entered summary judgment in favor of defendants, and denied pedestrian's motion for leave to renew and reargue her opposition to defendants' summary judgment motion. Pedestrian appealed.

The Supreme Court, Appellate Division, held that:

- Pedestrian was entitled to renew opposition to summary judgment motion, and
- Fact issue as to whether defendants created allegedly defective condition of sidewalk precluded summary judgment in favor of defendants.

Pedestrian, who suffered injuries when she fell on sidewalk, submitted new facts not offered on prior summary judgment motion by city and city department of transportation, and thus, she was entitled to renew opposition to such motion, in her personal injury action alleging that defendants negligently designed sidewalk, where pedestrian submitted documents that she had received in response to her Freedom of Information Law (FOIL) request to department, documents demonstrated that city agency had approved design of subject sidewalk, which contained smooth polished granite and purportedly excessive slope, installation of sidewalk was part of extensive sidewalk improvement project, and pedestrian failed to submit documents in opposition to prior motion because she had not yet received them.

Triable issues of fact as to whether city and city department of transportation created allegedly slippery and excessively sloped condition of sidewalk, which purportedly contained smooth polished granite, precluded summary judgment in favor of city and department on negligence claim by pedestrian, who suffered injuries when she fell on sidewalk.

While the city administrative code provision that governs liability for unsafe sidewalk conditions expressly shifts tort liability to an abutting property owner for injuries proximately caused by the owner's failure to maintain the sidewalk in a reasonably safe condition, it does not shift tort liability for injuries proximately caused by a municipality's affirmative acts of negligence.