

Bond Case Briefs

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McCalla v. Piris-Fraser

Supreme Court, Appellate Division, Second Department, New York - November 15, 2023 - N.Y.S.3d - 2023 WL 7562158 - 2023 N.Y. Slip Op. 05722

Pedestrian filed personal injury suit against owner of premises abutting public sidewalk, seeking to recover for injuries she allegedly sustained when she tripped and fell on the sidewalk.

The Supreme Court, Kings County, denied owner's motion for summary judgment. Owner appealed.

The Supreme Court, Appellate Division, held that:

- Owner's use of premises' basement as home office did not affect residential-use exemption from liability under city code, and
- Owner was not liable to pedestrian under common-law principles.

In absence of any evidence that owner of two-family owner-occupied residence abutting sidewalk on which pedestrian fell used residence's basement, as home office for her medical practice, with regularity or that she claimed premises as her business address or as tax deduction, her use of basement as home office was merely incidental to residential use, and thus, her use of basement did not affect property's status as owner-occupied residence, under city administrative code provision exempting owners of one-, two-, and three-family owner-occupied residences from tort liability under provision's shifting of liability from city to abutting owners, for injuries arising from defective sidewalks.

Owner of property abutting public sidewalk where pedestrian tripped and fell was not liable, under common-law principles, to pedestrian for injuries pedestrian allegedly sustained in her fall, absent evidence that owner created the defective condition that allegedly caused pedestrian's fall, that owner had actual or constructive notice of the defect before pedestrian's fall, or that owner made a special use of that area of the sidewalk.