

Snyder v AFCO Avports Mgt. LLC

2022 NY Slip Op 34805(U)

April 14, 2022

Supreme Court, Orange County

Docket Number: Index No. EF002844-2019

Judge: James L. Hyer

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the 30 day statutory time period for appeals as of right (CPLR 5512 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE**

-----X
KATHY SNYDER and D. JAY SNYDER,

Plaintiffs,

-against -

AFCO AVPORTS MANAGEMENT LLC and THE
PORT OF AUTHORITY OF NEW YORK &
NEW JERSEY,

Defendants,

-----X
HYER, J.S.C.

DECISION AND ORDER

Index No. EF002844-2019

Seq. No. 2

Motion Date: 03/09/2022

The following papers, numbered 1 to 9, were considered in connection with Defendants' Notice of Motion, dated January 10, 2022, seeking summary judgment dismissing the complaint.

PAPERS	NUMBERED
Notice of Petition/Affirmation (Badagliacca)/Affidavit of Jay Todd/ Statement of Material Facts/ Exhibits A-H	1-5
Affirmation in Opposition (Cambareri)/Exhibit 1/Response to Statement of Material Facts	6-8
Reply Affirmation	9

On July 20, 2018 at approximately 4:00 p.m., Plaintiff allegedly tripped and fell on the sidewalk in the long term parking lot of the Stewart International Airport (the "Airport"). Plaintiff testified that she tripped on a piece of raised sidewalk. Plaintiff filed a Summons and Complaint on April 11, 2019. Avports and the Port Authority filed their Verified Answers on May 31, 2019 and June 17, 2019, respectively.

Defendants move to dismiss the complaint, contending that the alleged defect was trivial as a matter of law and therefore not actionable. Generally, the issue of whether a dangerous or defective condition exists on the property of another depends on the facts of each case and is a question of fact for the jury (*see Trincere v County of Suffolk*, 90 NY2d 976, 977 [1997]; *Melia v 50 Ct. St. Assoc.*, 153 AD3d 703 [2d Dept 2017]). However, a property owner may not be held liable for trivial defects, not constituting a trap or nuisance, over which a pedestrian might merely stumble, stub his or her toes, or trip (*see Trincere v County of Suffolk*, 90 NY2d at 977; *Sturm v Myrtle Catalpa, LLC*, 149 AD3d 1130, 1131 [2d Dept 2017]).

In determining whether a defect is trivial, the court must examine all the facts presented, including the “width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury” (*Trincere v County of Suffolk*, 90 NY2d at 978 [internal quotation marks omitted]). Photographs that fairly and accurately represent the accident site may be used to establish that a defect is trivial and not actionable (*Mazza v Our Lady of Perpetual Help Roman Catholic Church*, 134 AD3d 1073 [2d Dept 2015]).

“A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses. Only then does the burden shift to the plaintiff to establish an issue of fact” (*Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 79 [2015]; *see Parente v City of New York*, 144 AD3d 1117 [2d Dept 2016]). In support of the motion, Defendants submitted Plaintiff’s deposition testimony and photographs which Plaintiff claimed accurately depicted the condition that allegedly caused her to fall.

Plaintiff testified at her deposition that it was a “nice, clear day.” The photographs taken by Jay Snyder on the day of the accident also show that it was sunny. There is no evidence or testimony that the area was crowded or even populated with any individuals other than Plaintiffs at the time of the fall. Further, there is no evidence of any obstruction to Plaintiff’s view of the sidewalk. Plaintiff testified that she was concerned about negotiating the manhole cover located immediately after the elevation change in the sidewalk slabs which, Plaintiff alleges, was the cause of her fall. The photographs do not depict any significant height differential between the two sidewalk slabs.

Defendants also submit the affidavit of J. Jay Todd, an expert in human factors, who opines that a typical pedestrian directs the majority of their gaze along meaningful area of their path of travel and that the sidewalk elevation change would have been visitable and detectable to someone in Plaintiff’s position, especially considering that it is a common pedestrian experience to encounter elevation changes while walking on a sidewalk. The incident elevation change did not constitute an unreasonable or unexpected hazard to a reasonably attentive pedestrian in Plaintiff’s position. In fact, her husband traversed the sidewalk without incident, supporting Defendants’ argument.

In light of the photographs, the testimony and the Todd affidavit, Defendants established their prima facie entitlement to judgment as a matter of law that the condition at issue was trivial and therefore not actionable (*see Hutchinson v. Sheridan Hill House Corp.*, 26 NY3d 66).

Plaintiffs’ opposition consists solely of an attorney affirmation and a notarized witness statement of Cynthia VanGrol. Her statement does not create any fact issue as to whether the alleged defect was trivial as a matter of law. VanGrol claims she “tripped” over a portion of the sidewalk but did not fall. There is no evidence that whatever portion of the sidewalk VanGrol

claims she tripped over was the same portion that caused plaintiff to fall. Plaintiffs have failed to raise a triable issue of fact (*Dery v K Mart Corp.* 84 AD3d 1303 [2d Dept 2011]).

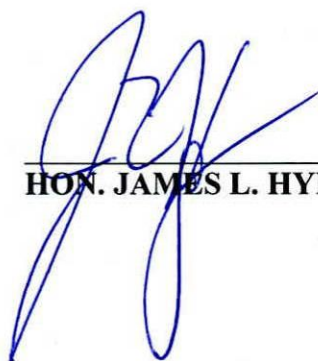
Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgment is granted; and it is further

ORDERED that the complaint is dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: Goshen, New York
April 14, 2022



HON. JAMES L. HYER, J.S.C.

TO: Counsel of Record Via NYSCEF