

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA-3**

#013

Tania Richardson,

Index No. 24325/2020E

Motion seq. 13

Plaintiff,

-against-

DECISION & ORDER**Hon. Mitchell Danziger, J.S.C.**Mohammed Ali, The City of New York, and
Consolidated Edison Company of New York, Inc.,

Defendants.

The following papers were read on the motion (Seq. No. 13) by Mohammed Ali (Ali) pursuant to CPLR 3212 for
Summary Judgment

Papers	NYSCEF Doc No(s).
Notice of Motion, Affirmation and Exhibits Annexed	219-241
Affirmation by Plaintiff in Opposition	246-248
Affirmation by the City in Opposition	249-257
Affirmation in Reply	260

This matter arises from a January 24, 2020 trip-and-fall accident in Bronx County. Plaintiff was walking on Walton Avenue between East 181st Street and Anthony Baez Place when she tripped and fell on a loose and unlevel sidewalk flag containing a round metal cap (NYSCEF Doc No. 231, plaintiff 50-h; NYSCEF Doc No. 233, plaintiff tr 125). Plaintiff described a gap around the flag that was “big enough for [her] foot to fit.” Several photographs of the sidewalk flag were marked as exhibits during plaintiff’s 50-h hearing (NYSCEF Doc No. 232, exhibits).

The parties dispute the location of the defect. Plaintiff alleges that the defect was adjacent to Ali’s property at 2153 Walton Avenue. Ali maintains that the defect was adjacent to the neighboring property at 2151 Walton Avenue. Plaintiff, in her testimony, could not identify the defect’s exact address. Plaintiff relies on Department of Transportation (NYCDOT) inspection reports which indicate loose and unlevel concrete surrounding a City water meter in front of 2153 Walton Avenue (NYSCEF Doc No. 235). Guillermo Coste, a NYCDOT sidewalk inspector who produced at least one report, testified that the tripping hazard he identified in his report matched plaintiff’s photographs of the defect (NYSCEF Doc No. 238, Coste tr 28). However, Coste later explained that he identified the property line solely by visual inspection and without reference to any survey (Coste tr 38). Coste conceded that the defect was actually located in front of 2151 Walton Avenue, not 2153 Walton Avenue (Coste tr 40). Eliot Senor, a licensed land surveyor and professional engineer, surveyed the sidewalk and determined that the defect depicted in plaintiff’s photos was located in front of 2151 Walton Avenue (NYSCEF Doc No. 239, Senor affidavit).

Ali purchased 2153 Walton Avenue in 2016 and lived there with his family (NYSCEF Doc No. 253, Ali tr 9). Ali admits that a “shaking” concrete sidewalk flag surrounding a DEP cap existed in front of his property. Ali complained to the City in 2018 and again in 2019, but the City did not repair the condition. In approximately 2022, two years after the accident, Ali repaired the flag with cement and rebar.

Ali argues that the action should be dismissed against him because the defect was not adjacent to his property. Ali further argues that, even if the defect were adjacent to his property, he is exempt from liability because his property was an owner-occupied residence at the time of the accident and he neither caused nor created the defect.

On a motion for summary judgment, the proponent “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The court’s role is “to determine whether there is a material factual issue to be tried, not to resolve it” (*S.A. De Obras y Servicios, COPASA v Bank of Nova Scotia*, 170 AD3d 468, 472 [1st Dept 2019], quoting *Sommer v Fed. Signal Corp.*, 79 NY2d 540, 554 [1992] [internal quotation marks omitted]). The court’s role “is limited to issue finding, not issue resolution” (*Dormitory Auth. of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704, 717 [2018], quoting *Kriz v Schum*, 75 NY2d 25, 33 [1989] [internal quotation marks omitted]).

Summary judgment disposition is inappropriate “where varying inferences may be drawn, because in those cases it is for the factfinder to weigh the evidence and resolve any issues necessary to a final conclusion” (*Dormitory Auth.*, 30 NY3d at 717). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [internal citation omitted]).

Where a moving party successfully demonstrates its prima facie entitlement to summary judgment, the burden shifts to the party in opposition to submit admissible evidence demonstrating the existence of a material issue of fact, or to tender an acceptable excuse for its failure to do so (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381, 383-384 [2004]).

Ali is entitled to summary judgment regardless of the defect’s location. Under the Administrative Code of the City of New York § 7-210 (b), an owner of a one-, two-, or three-family residence that is, in whole or in part, owner-occupied and used exclusively for residential purposes is exempt from liability for failure to maintain an abutting sidewalk in a reasonably safe condition. This exemption recognizes the inappropriateness of shifting the responsibility for sidewalk maintenance from the City onto “small-property owners in residence, who have limited resources” (*Coogan v City of New York*, 73 AD3d 613, 614 [1st Dept 2010]). A homeowner’s testimony alone suffices to show prima facie that the exemption applies (*see Hernandez v Ortiz*, 165 AD3d 559, 559 [1st Dept 2018] [finding that defendant’s testimony established owner-occupied, one-family home]). However, an exempt property owner may nevertheless be held liable if he caused or created the defect (*see Gilmartin v City of New York*, 81 AD3d 411, 412 [1st Dept 2011] [finding that exempt homeowners “failed to establish their freedom from common-law liability by showing that they did not affirmatively cause or create the alleged defect”]).

Here, Ali testified that his property is a two-story house with three bedrooms on each floor and a basement, and that he lives there with his family and other residential tenants. The deed, which describes the property as a one-family dwelling, corroborates Ali’s testimony (NYSCEF Doc No. 254, deed). Therefore, Ali establishes prima facie that the homeowner’s exemption applies. Ali also testified that he did not do any work on the sidewalk until after plaintiff’s accident. Therefore, Ali establishes prima facie that he did not cause or create the defect. Therefore, Ali establishes his prima facie entitlement to summary judgment, even if plaintiff tripped on a sidewalk defect adjacent to Ali’s property.

In opposition, plaintiff and the City fail to raise a triable issue of material fact. The City contends that Ali did not live at the premises because his tax bills were mailed to a different address (NYSCEF Doc No. 255, Atik

affirmation and tax bills). However, that property tax bills are sent to a different address has no bearing on whether Ali regularly occupies the property as a residence (*see Kalajian v 320 E. 50th St. Realty Co.*, 154 AD3d 528, 529 [1st Dept 2017] [holding that homeowner's exemption applies where "the owner regularly occupies the property as a residence"]). The Administrative Code allows property tax bills to be mailed to any address the owner chooses, or to a lender that pays the taxes (Administrative Code of City of NY § 11-416 [a]). Therefore, tax bill routing follows the owner's billing instructions, not occupancy. Further, residency is a multi-factor intent-plus-presence inquiry where "no single factor shall be solely determinative," and the City presents only this single factor against Ali's residency (*see Ansonia Assoc. Ltd. Partnership v Unwin*, 130 AD3d 453, 454 [1st Dept 2015]). Therefore, the City fails to raise a question of fact about whether the homeowner's exemption applies.

Plaintiff argues that the homeowner's exemption does not apply because the property was home to more than three families. Plaintiff alleges that up to six "families" resided at the property, based on Ali's testimony that at one point the house's residential tenants included two families on the first floor and "three guys" in the basement (Ali tr 11). However, "one-, two-, or three-family" dwellings are defined by the number of dwelling units in the building, not by tallying how many unrelated people live there. The Multiple Dwelling Law defines a "dwelling unit" as rooms "arranged, designed, used or intended for use by one or more persons living together and maintaining a common household," with lawful cooking and sanitary facilities reserved for those occupants (*Peyton v New York City Bd. of Standards and Appeals*, 36 NY3d 271, 281 [2020]). Therefore, a one-family dwelling remains a one-family dwelling even if several non-related boarders pay rent (*see Baer v Town of Brookhaven*, 73 NY2d 942, 943 [1989] [deeming five unrelated women one "housekeeping unit" in residential zone where only one-family dwellings were permitted]). Therefore, plaintiff likewise fails to raise a triable issue of fact about whether the homeowner's exemption applies. Ali's summary judgment motion is granted, and the action against Ali is dismissed.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movants were not addressed by the Court, it is hereby denied. Counsel for plaintiff shall serve a copy of this order with notice of entry upon all parties within 30 days of the upload of this Order in NYSCEF.

Dated: 6/16/26


 HON. MITCHELL DANZIGER, J.S.C.

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| 1. CHECK ONE..... | ☐ CASE DISPOSED IN ITS ENTIRETY | ☒ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☒ GRANTED | ☐ DENIED ☐ GRANTED IN PART ☐ OTHER |
| 3. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER ☐ SUBMIT ORDER | ☐ SCHEDULE APPEARANCE |
| | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |