New York Law Journal
Real Estate Trends
WWW.NYLJ.COM
An ALM Publication
VOLUME 263—NO. 14
WEDNESDAY, JANUARY 22, 2020

ZONING AND LAND USE PLANNING

Landowner Liability For Sidewalk Injuries

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In New York, liability for injuries sustained as a result of the negligent maintenance of, or the existence of dangerous and defective conditions to, a public sidewalk generally is placed on the municipality and not the abutting landowner. *See, e.g.,* Roark v. Hunting, 24 N.Y.2d 470 (1969). There are, however, circumstances under which this general rule is inapplicable and the abutting landowner can be held liable. For example, liability to abutting landowners generally can be imposed where the sidewalk was constructed in a special manner for the benefit of the abutting owner, *see, e.g.,* Clifford v. Dam, 81 N.Y. 52 (1880), and where the abutting landowner affirmatively caused the defect or negligently constructed or repaired the sidewalk, *see, e.g.,* Colson v. Wood Realty Co., 39 A.D.2d 511 (3d Dep't 1972).

In addition, an abutting landowner can face liability where a local ordinance or statute specifically charges it with a duty to maintain and repair the sidewalk and imposes liability for injuries resulting from the breach of that duty, as confirmed by the New York Court of Appeals in *Hausser v. Giunta*, 88 N.Y.2d 449 (1996).

Hausser and numerous court decisions since then have helped delineate the parameters of the "liability shifting" rule, as discussed below.

The *Hausser* Decision

The *Hausser* case arose after Mary Hausser allegedly tripped over a broken, cracked, or depressed portion of the sidewalk abutting the front of property in Long Beach owned by her neighbors, Salvatore and Theresa Giunta. Hausser allegedly injured her knee and she and her husband sued the Giuntas. The parties cross-moved for summary judgment.

The Supreme Court, Nassau County, dismissed the complaint. The Appellate Division, Second Department, affirmed, and the dispute reached the Court of Appeals, which reversed.

In its decision, the court explained that Section 256 of the city code of Long Beach transferred liability from the city to abutting landowners, providing:

> The owner or occupant of lands fronting or abutting on any street, highway, traveled road, public lane, alley or square, shall make, maintain and repair the sidewalk adjoining his lands and shall keep such sidewalk and the gutter free and clear of and from snow, ice and all other obstructions. Such owner or occupant and each of them, shall be liable for any injury or damage by reason of omission, failure or negligence to make, maintain or repair such sidewalk.

The court then rejected Giunta's contention, relying on *Rooney v. City of Long Beach*, 42 A.D.2d 34 (2d Dept. 1973), that Municipal Home Rule Law § 11(1)(j) invalidated Section 256 and precluded Long Beach from transferring its liability to abutting landowners.

The court reasoned that Section 11 of the Municipal Home Rule Law restricted the adoption of local laws that superseded a state statute, but that, unless a contrary state statute existed, it did "not expressly prohibit localities from enacting statutes which transfer liability to property owners for injuries caused by defective sidewalks."

The court found that the Long Beach statute—Section 256—did not supersede any state law and that no

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other state statute, aside from Section 11(1)(j), was involved in the Haussers' action. Therefore, the court concluded, Section 11(1)(j) did "not prohibit the transfer of a locality's liability to abutting property owners for injuries sustained due to defective sidewalks."

Ordinance Requirement

A number of decisions since *Hausser* have emphasized the absence of a liability shifting ordinance in refusing to hold abutting landowners liable for injuries allegedly suffered on their sidewalks.

For example, in *Schroeck v. Gies*, 110 A.D.3d 1497 (4th Dep't 2013), Patricia and Gary Schroeck sued Darryl and Dawn Gies, alleging that Patricia Schroeck had been injured after she tripped and fell on an uneven sidewalk that crossed the Gies' driveway.

The Supreme Court, Erie County, granted the Gies' motion for summary judgment, and the Schroecks appealed to the Appellate Division, Fourth Department.

The Fourth Department affirmed, finding it "undisputed" that the applicable town code did not impose liability on the Gies for injuries to users of the public sidewalk abutting their property. (The appellate court added that the testimony and affidavits submitted by the Gies in support of their summary judgment motion also established that the sidewalk had not been constructed in a special manner for their benefit, that they had not affirmatively created the alleged defect, and that they had not negligently constructed or repaired the sidewalk).

The Appellate Division, Second Department, reached the same result in *Lahens v. Town of Hempstead*, 132 A.D.3d 954 (2d Dept. 2015).

The plaintiff in *Lahens* alleged that he had been injured after tripping and falling on the edge of a raised sidewalk flag and he sued Mark Black, who owned the property abutting the sidewalk. The Supreme Court, Nassau County, granted Black's motion for summary judgment, and Lahens appealed.

The Second Department affirmed, reasoning that although the town code imposed a duty on an abutting landowner to maintain and repair the sidewalk in front of his or her property, it did not "expressly impose tort liability on the owner for injuries caused by a violation of that duty." *See, also, Maya v. Town of Hempstead*, 127 A.D.3d 1146 (2d Dep't 2015) (same).

> Although New York law clearly permits municipalities to shift the responsibility for sidewalk maintenance and liability to abutting landowners, whether to actually shift those responsibilities is a decision each municipality must make for itself.

Language Matters

Another recent decision, *Dingledy v. Village of Brocton*, 51 Misc.3d 1221(A) (Sup. Ct. Chautauqua Co. 2016), illustrates the need for clarity in local ordinances in order for property owners to be held responsible for injuries on abutting sidewalks.

The plaintiff in this case alleged that she had been injured when she slipped and fell on a sidewalk in the upstate Village of Brocton that was covered by snow and ice. The plaintiff sued the abutting property owner, contending that the village's sidewalk law allowed her to recover damages from the property owner.

The Supreme Court, Chautauqua County, granted summary judgment in favor of the property owner.

In its decision, the court explained that the village's sidewalk law charged a person whose property adjoined or abutted a sidewalk in the village with "the responsibility to keep such sidewalk in a good state of repair and free from defects and debris." Notably, the court added, the sidewalk law did not require that a property owner "shovel snow or melt ice that might accumulate on the sidewalk." The court pointed out that the sidewalk ordinance also stated that, "[o]n any claim presented for bodily injury or property damage on the sidewalk, the adjoining or abutting property owner shall be held liable in tort for such damages to another."

The court reasoned that the owner of land abutting a public sidewalk did "not owe the public a duty to keep the sidewalk in a safe condition, solely by reason of being an abutting owner." The court added that, unless a statute or ordinance "clearly imposes liability" upon an abutting landowner, only the municipality may be held liable for the negligent failure to remove ice and snow from a sidewalk.

Moreover, the court continued, such an ordinance must "expressly impose a duty on the landowner to maintain the sidewalk and state that a breach of that duty will result in liability." The test, the court stated, was two-pronged: the language of the ordinance must not only charge the owner with a duty to

maintain the public sidewalk, but it also must specifically state that a breach of that duty will result in liability.

The court then ruled that although the village's sidewalk law shifted liability to private citizens for torts on public property, it "limited the scope of an abutting landowner's duty of care." In the court's view, it "strain[ed] any reasonable sense of analogy" to equate "dirt and debris" with "snow and ice." The court concluded that if the village wanted to shift the responsibility of removing snow and ice from sidewalks to abutting landowners, it certainly could do so – but the local law in effect as of the time of the plaintiff's alleged injury "had not" done that.

Conclusion

Local governments address sidewalk maintenance and liability in a variety of ways. For instance, the Village of Malone imposes a duty on abutting landowners to maintain their sidewalks, but does not shift liability to them for breach of that duty. *See* https://ecode360.com/15035076; *see, also,* Village of East Rockaway code, *available at* https://ecode360.com/6957204 (same).

Other villages impose a duty of maintenance and also shift liability for breach of that duty to abutting landowners. *See, e.g.,* Town of Oyster Bay code, *available at* https://ecode360.com/26877673 ("Such owner or occupant and each of them shall be liable for any injury or damage by reason of omission, failure or negligence to make, maintain or repair such sidewalk or for a violation or nonobservance of the ordinances relating to making, maintaining and repairing sidewalks, curbstones and gutters."); Village of Farmingdale code, *available at* https://ecode360.com/14384231 (same) ("The adjoining landowner or occupant shall be responsible for the maintenance and repair of such sidewalks and, upon the breach of such responsibility and duty, shall be responsible to those who are injured thereby.); Town of Woodstock code, *available at* https://ecode360.com/8008820 (same) ("Failure of the owner or occupant to comply with this article shall create a cause of action against said owner and/or occupant in favor of any person injured as a result of such failure to comply.").

New York City added Section 7-210 to its administrative code, effective Sept. 14, 2003, shifting tort liability from the city to property owners (other than the owners of one-, two- or three-family residential real property that is (i) in whole or in part, owner-occupied, and (ii) used exclusively for residential purposes) for personal injuries proximately caused by their failure to maintain the sidewalks abutting their premises in a reasonably safe condition. The change in law came after a study found that, in the three years preceding introduction of the legislation, the city had been served with more than 10,000 sidewalk-related claims. *See Gangemi v. City of New York*, 13 Misc.3d 1112 (Sup. Ct. Kings Co. 2006).

Although New York law clearly permits municipalities to shift the responsibility for sidewalk maintenance and liability to abutting landowners, whether to actually shift those responsibilities is a decision each municipality must make for itself. There are policy arguments both in favor of and against shifting liability. Municipalities may find shifting maintenance and liability to adjacent owners appealing because it helps reduce costs that otherwise are paid by taxpayers. On the other hand, abutting landowners who already pay taxes are likely to argue that sidewalk maintenance is a municipal function that should be paid for by all taxpayers.

Moreover, because the requirement for prior written notice of a defective sidewalk condition that protects municipalities from suit does not apply to claims against private landowners, maintenance and liability shifting laws may result in an increased number of lawsuits. When considering whether to adopt such a law, it behooves government officials to carefully weigh the positive impacts the law will have on the municipality's finances against the negative impacts it will have on abutting owners.