WILLIAM HURLEY, Plaintiff-Appellant,

v.

JOCELYN YAPCHULAY, Defendant-Respondent.

No. A-0382-09T3.

Superior Court of New Jersey, Appellate Division.

Argued April 13, 2010.
Decided June 22, 2010.

Pasquale Agresti argued the cause for appellant (Raff & Masone, attorneys; Mr. Agresti, on the brief).

Matthew L. Rachmiel argued the cause for respondent (**Methfessel** & **Werbel**, attorneys; Mr. Rachmiel, on the brief).

Before Judges Fuentes and Simonelli.

PER CURIAM.

Plaintiff William Hurley appeals from the order of the Law Division granting defendant Jocelyn Yachulay's summary judgment motion, thereby dismissing his personal injury cause of action. The motion judge determined that plaintiff did not show that defendant created, or was otherwise legally responsible for, the condition on the sidewalk that caused plaintiff to trip, fall, and injure himself. We affirm.

Because the trial court's ruling was made in the context of a summary judgment motion, we will recite all of the relevant facts in the light most favorable to plaintiff. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

On November 20, 2008, plaintiff parked his car in front of his next-door neighbor's home located on Stevens Avenue in Jersey City. As he walked away from the car, his "right foot hit a protruding pipe," causing him to fall and strike his face on the curb. He fractured his orbital bone[1] and sustained a broken nose. The property abutting the sidewalk is owned by defendant and used exclusively by her as her residence.

Plaintiff has not come forward with any evidence showing that before the accident defendant had actual notice or knowledge of the condition of the sidewalk. In fact, in response to plaintiff's interrogatories, defendant indicated that the "protruding water pipe was present when I bought my home but I am unaware of any prior complaints by anyone about it."

Against this record, Judge Iglesias found that the matter was ripe for summary judgment disposition because, accepting plaintiff's factual allegations as true, defendant was not liable as a matter of law. We agree.

The question of sidewalk liability for pedestrian accidents turns on the use of the property abutting the sidewalk. Owners of properties used for commercial purposes owe a duty of care to pedestrians to keep the sidewalk abutting the property in a safe manner. Stewart v. 104 Wallace Street, Inc., 87 N.J. 146, 152-53 (1981). By contrast, "absent negligent construction or repair," an owner of a property used exclusively for her own residential use does not owe a duty of care to a pedestrian injured as a result of the condition of the sidewalk abutting the property. Dupree v. City of Clifton, 351 N.J. Super. 237, 241 (App. Div. 2002), aff'd o.b., 175 N.J. 449. (2003). Even if the abutting property is residential, however, the property owners will still be liable if:

> (1) they or their predecessors negligently constructed or repaired the sidewalk; (2) their use of the property rendered the sidewalk unsafe; (3) they installed a drain, grating or hole in or upon the sidewalk; or (4) they created a dangerous condition in the sidewalk by building upon it.
>
> [Dupree, supra, 351 N.J. Super. at 246.]

Here, there is no dispute that defendant's property was residential in character at the time of the accident. Furthermore, there is no evidence to support the application of any one of the four Dupree factors to impose liability on defendant. Specifically, plaintiff cannot establish that: (1) defendant's predecessor-in-title installed the pipe; (2) the pipe is connected with defendant's use of the property; (3) defendant installed the pipe; or (4) she otherwise created the dangerous condition that caused plaintiff's

fall.

In this light, we affirm substantially for the reasons expressed by Judge Iglesias in his oral opinion delivered from the bench on August 14, 2009.

Affirmed.

[1] Plaintiff does not specify whether it was the left or right orbital bone that was fractured.