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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2402-15T1

LANCE TEGEDER,

Plaintiff-Appellant,

v.

RYAN SPREEN, JENNIFER
B. SPREEN,

Defendants-Respondents,

and

CITY OF LAMBERTVILLE,

Defendant.

Submitted January 31, 2017 – Decided February 27, 2017

Before Judges Messano and Guadagno.

On appeal from the Superior Court of New
Jersey, Law Division, Hunterdon County, Docket
No. L-0351-14.

Greg Prosmushkin, P.C., attorneys for
appellant (Jeffrey J. Goldin, on the briefs).

Sweet Pasquarelli, P.C., attorneys for
respondents Ryan Spreen and Jennifer B. Spreen
(Kenneth C. Ho, on the brief).

PER CURIAM

Plaintiff Lance Tegeder appeals from the January 11, 2016 order granting summary judgment to defendants Ryan Spreen and Jennifer B. Spreen, who are husband and wife and owners of residential property (the property) located in the City of Lambertville (Lambertville). The motion record reveals that in the evening of October 31, 2013, plaintiff tripped and fell over an allegedly raised portion of the public sidewalk abutting defendants' property and suffered injuries as a result. Plaintiff filed suit against defendants and Lambertville alleging negligence in the maintenance of the sidewalk.¹

Following discovery, defendants moved for summary judgment. In support of the motion, Ryan Spreen certified that defendants made no repairs to the sidewalk during their period of ownership, a fact both defendants reiterated in their depositions. Defendants also provided Lambertville's response to an Open Public Records Act request they had made. The response demonstrated the city had no records regarding permits issued for the property prior to 2009. Additionally, a search of records since 2009 revealed no street opening permits were issued for the property and the street was last reconstructed in 1987 and 1989, well before defendants purchased the home in 2007. Similarly, the Delaware and Raritan

¹ Plaintiff eventually filed a stipulation of dismissal with prejudice as to Lambertville.

Canal Commission, which exercised jurisdiction over the property, furnished the only permit it issued to defendants, which was for construction of a fence. Furthermore, defendants submitted a report from their expert engineer, which opined defendants made no improvements to the sidewalk.

In opposition, plaintiff objected to defendants' late-served expert's report. Plaintiff sought time to oppose the report, arguing his potential expert's report might raise a material factual dispute as to whether defendants had negligently improved the sidewalk. Otherwise, plaintiff asserted no facts contrary to those stated by defendants.

In a written statement of reasons that accompanied his order, Judge Michael F. O'Neill noted that pursuant to Stewart v. 104 Wallace Street, Inc., 87 N.J. 146, 159 (1981), the Court imposed a duty to maintain abutting sidewalks only on owners of commercial property. Citing our decision in Lodato v. Evesham Township, 388 N.J. Super. 501, 507 (App. Div. 2006), Judge O'Neill correctly stated that no such duty has been imposed upon residential property owners.

Judge O'Neill accepted *arguendo* plaintiff's argument that immunity might not apply pursuant to the "special use or improper use doctrine" See Stewart, supra, 87 N.J. at 152 ("the abutting landowner is liable for faulty or dangerous construction

of a sidewalk if . . . he . . . built the sidewalk[,]" or made an "improper or negligent repair of the sidewalk[,]" or his "'special use' or his 'improper use' of" the sidewalk rendered it unsafe). However, Judge O'Neill correctly determined plaintiff "ha[d] not come forth with even a scintilla of evidence that . . . defendants may have taken any affirmative action to the sidewalk that caused plaintiff's injuries." The judge rejected plaintiff's claim that defendants' denials somehow raised a "genuine issue of material fact." R. 4:46-2(c). He granted defendants' motion and this appeal followed.

Before us, plaintiff reiterates the arguments made in the Law Division. He contends summary judgment was improper because it was based solely upon defendants' "credibility." He also urges us to "reject the anachronistic rule of blanket residential immunity."

When reviewing the grant of summary judgment, we apply the "same standard as the motion judge." Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

That standard mandates that summary judgment be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving

party is entitled to a judgment or order as a matter of law."

[Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).]

"To defeat a motion for summary judgment, the opponent must 'come forward with evidence that creates a genuine issue of material fact.'" Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super. 1, 32 (App. Div.), certif. denied, 211 N.J. 608 (2012)), certif. denied, 220 N.J. 269 (2015). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion." Puder v. Buechel, 183 N.J. 428, 440-41 (2005) (citations omitted). "When no issue of fact exists, and only a question of law remains, [we] afford[] no special deference to the legal determinations of the trial court." Templo Fuente De Vida, supra, 224 N.J. at 199 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).


In this case, plaintiff failed to produce any evidence that contradicted defendants' sworn testimony, which was corroborated by the lack of any official record demonstrating work or repairs were done to the sidewalk. See, e.g., Manata v. Pereira, 436 N.J. Super. 330, 345 (App. Div. 2014) ("[E]vidence of the absence of an entry in a business record may be offered to prove the non-

occurrence or nonexistence of a matter.") (citing N.J.R.E. 803(c)(7)). We affirm the grant of summary judgment for the reasons expressed by Judge O'Neill.

Lastly, as to plaintiff's invitation to reject existing precedent in the field, we recently said "[b]ecause we are an intermediate appellate court, we are bound to follow the law as it has been expressed by . . . our Supreme Court." Scannavino v. Walsh, 445 N.J. Super. 162, 172-173 (App. Div. 2016) (citing Lake Valley Assocs., LLC v. Twp. of Pemberton, 411 N.J. Super. 501, 507 (App. Div.), certif. denied, 202 N.J. 43 (2010), and Lodato, supra, 388 N.J. Super. at 507 ("declining to deviate from the Supreme Court's view 'immunizing abutting residential landowners from liability'")).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION