

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Y/kmg

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Submitted - October 31, 2007

STEPHEN G. CRANE, J.P.  
DAVID S. RITTER  
STEVEN W. FISHER  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

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2007-03577

DECISION & ORDER

Joyce Powell, appellant, v Cedar Manor  
Mutual Housing Corporation, et al., respondents.

(Index No. 26071/04)

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Stephen David Fink, Forest Hills, N.Y., for appellant.

Thomas D. Hughes, New York, N.Y. (Richard C. Rubinstein of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Satterfield, J.), dated March 12, 2007, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

“In slip-and-fall cases involving snow and ice, a property owner is not liable unless he or she created the defect, or had actual or constructive notice of its existence” (*Gil v Manufacturers Hanover Trust Co.*, 39 AD3d 703, 704). Moreover, “a property owner will not be held liable for accidents resulting from the accumulation of snow or ice on the premises until an adequate period of time has passed following the cessation of the storm to allow the owner an opportunity to ameliorate the hazardous condition” (*Fahey v Serota*, 23 AD3d 335, 336-337).

Here, the defendants established their prima facie entitlement to judgment as a matter of law by submitting proof of a storm in progress at the time of the fall (*see DeVito v Harrison House*

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*Assoc.*, 41 AD3d 420, 421). In opposition, the plaintiff failed to raise a triable issue of fact (*see Small v Coney Is. Site 4A-1 Houses, Inc.*, 28 AD3d 741; *see also DeStefano v City of New York*, 41 AD3d 528, 529; *Dowden v Long Is. R.R.*, 305 AD2d 631, 631-632; *Chapman v City of New York*, 268 AD2d 498; *Taylor v New York City Tr. Auth.*, 266 AD2d 384). The plaintiff's contention that she fell on "old" ice from a prior storm which was hidden under the new snowfall is mere speculation and insufficient to defeat the defendants' motion for summary judgment (*see Small v Coney Is. Site 4A-1 Houses, Inc.*, 28 AD3d at 742; *Palopoli v City of New York*, 305 AD2d 388; *Abaya v City of New York*, 257 AD2d 446, 446-447).

CRANE, J.P., RITTER, FISHER, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court