

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

D36948
O/nl

_____AD3d_____

Argued - December 4, 2012

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-07998

DECISION & ORDER

Eugenia Smilowitz, appellant, v GCA Service Group,
Inc., respondent.

(Index No. 26834/08)

Ferro, Kuba, Mangano, Skylar, P.C. (Kenneth E. Mangano, Rebecca J. Fortney, and
Michael N. Manolakis of counsel), for appellant.

Andrea G. Sawyers, Melville, N.Y. (Dominic P. Zafonte of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Queens County (Taylor, J.), dated July 6, 2011, which granted the
defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

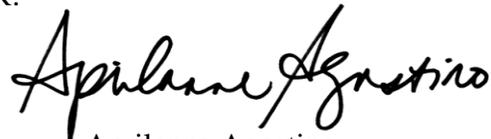
The plaintiff alleged that she slipped and fell on snow and ice as she was entering her
place of employment in St. John Hall, on the campus of St. John's University. The defendant was
under contract with the University to maintain the grounds, which included snow removal work. The
Supreme Court granted the defendant's motion for summary judgment dismissing the complaint.

Under the "storm in progress rule," neither a landlord nor a snow removal contractor
will be held liable for injuries sustained as a result of slippery conditions that occur during an
ongoing storm, or for a reasonable time thereafter (*Weller v Paul*, 91 AD3d 945, 947 [internal
quotation marks omitted]; see *Coyne v Talleyrand Partners, L.P.*, 22 AD3d 627). Here, the
defendant established its prima facie entitlement to judgment as a matter of law by producing
evidence that the accident occurred while a snow storm either was in progress or had just stopped

(see *Coyne v Talleyrand Partners, L.P.*, 22 AD3d 627). In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff tendered no evidence that the defendant either created or exacerbated the alleged icy condition that she slipped on (see *Espinal v Melville Snow Contrs.*, 98 NY2d 136, 142-143; *Coyne v Talleyrand Partners, L.P.*, 22 AD3d 627). Contrary to the plaintiff's contention, the speculation of the defendant's former employee, who had been employed as a porter for the defendant, that when round salt mixes with frozen rain "it's a little bit slippery," did not raise a triable issue of fact as to whether the defendant's snow removal efforts created or exacerbated a dangerous condition (see *Espinal v Melville Snow Contrs.*, 98 NY2d at 142). By merely undertaking snow removal, as required by contract, the defendant cannot be said "to have created or exacerbated a dangerous condition" (*id.* at 142). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court