

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

987

CA 10-00643

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GORSKI, JJ.

KELLY HAYES, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

NORSTAR APARTMENTS, LLC, AND SIARA
MANAGEMENT, INC., DEFENDANTS-APPELLANTS.

HANCOCK & ESTABROOK, LLP, SYRACUSE (JANET D. CALLAHAN OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

O'HARA, O'CONNELL & CIOTOLI, FAYETTEVILLE (DOMINIC S. D'IMPERIO OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (John C. Cherundolo, A.J.), entered June 18, 2009 in a personal injury action. The order denied defendants' motion for summary judgment dismissing plaintiff's complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained when she allegedly slipped and fell on ice in the parking lot of an apartment building owned by defendant Norstar Apartments, LLC and managed by defendant Siara Management, Inc. We conclude that Supreme Court properly denied defendants' motion for summary judgment dismissing the complaint. Although defendants met their initial burden of establishing as a matter of law that there was a storm in progress at the time of the accident (*see Chapman v Pyramid Co. of Buffalo*, 63 AD3d 1623; *Brierley v Great Lakes Motor Corp.*, 41 AD3d 1159, 1160), the evidence submitted by plaintiff, particularly the detailed affidavit from her expert meteorologist and the accompanying weather reports, raised an issue of fact whether the ice in question had formed prior to commencement of the storm (*see Schuster v Dukarm*, 38 AD3d 1358; *Williams v Patrick*, 30 AD3d 1059; *see also Bullard v Pfohl's Tavern, Inc.*, 11 AD3d 1026). We reject defendants' further contention that they are entitled to summary judgment because they established that plaintiff fell on snow that had recently fallen rather than ice previously formed. Plaintiff's deposition testimony was sufficient to raise an issue of fact in that regard as well.

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court