

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

1349

CA 09-00976

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

OSCAR PEREZ AND ILBA PEREZ,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

GRECIAN GARDEN APARTMENTS, LLC,
DEFENDANT-APPELLANT.

TREVETT CRISTO SALZER & ANDOLINA, P.C., ROCHESTER (VALERIE L. BARBIC
OF COUNSEL), FOR DEFENDANT-APPELLANT.

CELLINO & BARNES, P.C., ROCHESTER (JAMES E. MASLYN OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Matthew A. Rosenbaum, J.), entered December 2, 2008 in a personal injury action. The order denied the motion of defendant for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the complaint is dismissed.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by Oscar Perez (plaintiff) when he slipped and fell on an icy sidewalk outside an apartment complex owned by defendant. Defendant moved for summary judgment dismissing the complaint on the grounds that plaintiff's fall occurred during an ongoing ice storm and that it had no duty to correct the icy condition of the premises during the storm. Supreme Court erred in denying the motion. Defendant established its entitlement to judgment as a matter of law by submitting evidence that freezing rain was falling when plaintiff fell (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). "It is well settled that '[a] landowner is not responsible for a failure to remove snow and ice until a reasonable time has elapsed after cessation of the storm' " (*Brierley v Great Lakes Motor Corp.*, 41 AD3d 1159, 1160). Plaintiffs by their submissions in opposition to the motion failed to raise a triable issue of fact (*see generally Zuckerman*, 49 NY2d at 562).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court