

Simone v County of Cayuga

2006 NY Slip Op 30133(U)

September 11, 2006

Supreme Court, Cayuga County

Docket Number: 0003122/0051

Judge: Mark H. Fandrich

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FILED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CAYUGA

2006 SEP 14 AM 10:36

CAYUGA COUNTY CLERK

THERESA SIMONE,
Plaintiff,

vs.

COUNTY OF CAYUGA and
CITY OF AUBURN,
Defendants.

DECISION
Index No. 05-0312

HON. MARK H. FANDRICH
Assigned Justice

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Fandrich, Mark H., Acting Justice

This action was commenced by plaintiff, Theresa Simone, against defendant, County of Cayuga (“defendant County”), and defendant, City of Auburn (“defendant City”), for personal injuries allegedly suffered when she slipped and fell on snow while attempting to place money in a parking meter. The parking meter was located on a sidewalk in front of the Cayuga County Office Building.

Defendant County and defendant City each bring motions for summary judgment seeking dismissal of the Complaint. Plaintiff cross moves to amend her Complaint so as to conform to the requirements of General Municipal §50-i.

Defendant City. Auburn City Ordinance §C-129 requires prior written notice of any defective or dangerous conditions including conditions relating to ice and snow. Admittedly, defendant City received no written notice of the condition around the parking meter where plaintiff allegedly slipped and fell. Auburn City Ordinance §§259-6 and 259-15 place upon the landowner, the responsibility for keeping sidewalks free from ice and snow. The landowner in this case is defendant County, not defendant City. Although defendant City would, at various times, voluntarily remove snow that had piled along the curbs, this practice did not create the condition in question, and it did not increase the risk of harm to plaintiff. (*See, Castiglione v. Village of Ellenville*, 291 A.D.2d 769, 3rd Dept., 2002). There is evidence in the record that defendant City plowed city streets which sometimes caused snow to be pushed on abutting sidewalks. However, there is no evidence that defendant City created the alleged hazardous condition by reason of plowing snow from city streets. (*Fezza v. Rogers*, 167 AD2d 590, 3rd Dept., 1990; *Connerton v. City of Binghamton*, 236 AD2d 685, 3rd Dept., 1997) This Court also rejects plaintiff’s argument that the parking meters created a special benefit to defendant City,

thereby necessitating the maintenance of the area surrounding the parking meters. (*See, Roser v. City of Kingston*, 251 A.D.2d 936, 3rd Dept., 1998).

Defendant County. The sidewalk where the parking meter in question is located and where the plaintiff allegedly slipped and fell is owned by defendant County. Defendant County has no statute or ordinance requiring prior written notice of a dangerous or defective condition on county property; and there is no evidence that defendant County affirmatively created the condition. However, a municipality is responsible for hazards of which it has actual or constructive notice and a reasonable time to remediate the same. (*Clifford v. Woodlawn Volunteer Fire Company, Inc.*, 2006 NY Slip Op 5399, 4th Dept., 2006; *Finger v. Cortez*, 28 A.D.3rd 1089, 4th Dept., 2006).

In the instant case, there is a question of fact as to whether defendant County had constructive notice of the hazard and sufficient time to remedy it. Plaintiff testified that there was a high snow bank surrounding the parking meter in question, that was about 3 feet in diameter. Plaintiff also testified that the snow was piled to the top of the pole just below the meter itself, and that the place where plaintiff walked on when she slipped and fell was packed down snow that was approximately 6 inches wide with foot marks on it.

Robert Beaulieu, an employee of defendant County and the Building Maintenance Mechanic for the Cayuga County Office Building, maintains the buildings and grounds around the County Office Building including removal of snow and ice from the sidewalks in front of the County Office Building where the parking meter in question is located. He testified that he and his staff would scrape the sidewalk of snow and push it off the curb into Genesee Street, and would apply ice melt to the sidewalk. He further testified that when the snow had frozen and became hard around the parking meters, he would wait for defendant City to remove the snow

and ice during one of its hauling sessions. From the description of the quantity and texture of snow (i.e., packed) around the parking meter, coupled with the practice of defendant County to wait for defendant City to remove frozen or hard packed snow around the parking meters, it appears that there is a question of fact as to whether defendant County had actual or constructive notice of the alleged hazardous condition and sufficient time in which to remedy it. (Clifford v. Woodlawn Volunteer Fire Company, Inc., *supra.*).

By reason of the foregoing, defendant City's motion for summary judgment and motion for dismissal of the County's cross claims are granted; defendant County's motion for summary judgment is denied; and plaintiff's motion for leave to amend her complaint as to defendant County is hereby granted, without costs.

SUBMIT ORDER.

Dated: September 11, 2006
At Auburn, New York

ENTER,



HON. MARK H. FANDRICH
Acting Supreme Court Justice