

Rodriguez v New York City Hous. Auth.

2007 NY Slip Op 30730(U)

April 12, 2007

Supreme Court, New York County

Docket Number: 0105259/2006

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Solomon

PART 55

Index Number : 105259/2005

RODRIGUEZ, MARIA D.

INDEX NO. _____

VS

HOUSING AUTHORITY

MOTION DATE 11-20-06

Sequence Number : 003

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to 8 were read on this motion to/for summary judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1-4

Replying Affidavits _____

5-6

7-8

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
APR 16 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/12/07

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55

-----X

MARIA D. RODRIGUEZ,

Plaintiff,

-against-

INDEX NO. 105259/05

NEW YORK CITY HOUSING AUTHORITY,

DECISION AND ORDER

Defendant.

FILED

APR 16 2007

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JANE S. SOLOMON, J.

NEW YORK
COUNTY CLERKS OFFICE

In this personal injury action, defendant New York City Housing Authority ("Defendant") moves for summary judgment to dismiss the Complaint. For the reasons discussed herein, the motion is granted.

Defendant is the owner of a housing development known as Rutgers Houses located at 54-64 Rutgers Street in Manhattan. On January 17, 2005, at about 8:20 AM plaintiff Maria D. Rodriguez ("Plaintiff") was walking on the sidewalk (the "Subject Sidewalk") on Cherry Street in front of the Cherry Street entrance to Rutgers Houses. She claims that she slipped and fell on a patch of ice.

A Certified Report of the U.S. Department of Commerce National Climatic Data Center for the month of January 2005 ("Climate Report.") states that trace amounts of snow had fallen six days prior to the incident, but that the temperature had reached above freezing for four of these six days. The Climate Report also states that it had snowed early the morning of January 17, 2005 between 2:00 AM and 10:00 AM. Defendant's employees, two grounds keepers and a supervisor, state in affidavits that they did not

have specific recollections of the morning of the accident, but their records indicate that there was no snow or ice on Rutgers Houses sidewalks the day before Plaintiff's accident, no complaints of snow or ice conditions were received on January 17, that snow was falling as of 6 AM on January 17, and that snow removal began at 7 AM. Notice of Motion, Exhibits I, J and K.

Defendant's grounds keepers cleared snow and ice from the interior walkways and public sidewalks adjacent to Rutgers Houses using a Bobcat tractor and shovels. They continued plowing and shoveling until approximately 9:00 AM, when they completed snow clearing and began to spread sand and salt.

Plaintiff states that there were no barricades or signs warning of snow removal in progress, but admits that she observed Defendant's workers removing snow with a tractor. She also claims that there were no clear means of egress or ingress to Rutgers Houses because Defendant cleaned the entire perimeter of the housing project at once rather than closing one section or providing a path. She contends that this caused a dangerous, trap like condition around the entire perimeter of the property.

There is no duty to remove snow and ice while a storm is in progress. Calogerakos v. City of New York, 22 A.D.3d 407 (1st Dep't 2005). Plaintiff alleges that snow had fallen during the night, but was no longer falling at the time of her accident. However, even if the snow had stopped falling by 8:20 AM, New York City Administrative Code § 16-123 provides that an owner shall

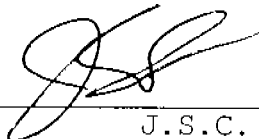
clear snow from an abutting sidewalk within four hours after snow ceases to fall, but any time between 9 PM and 7 AM is not counted toward the four hours. See also Prince v. New York City Housing Auth., 302 A.D.2d 285 (1st Dep't 2003). Since Plaintiff fell at 8:20 AM, and it is not contested that the subject snow fell through the night and continued until at least 6 AM, Defendant had no duty to clear the Subject Sidewalk of snow at the time of the accident.

Plaintiff argues, however, that the method by which Defendant chose to clear the Subject Sidewalk created a dangerous condition which led to her fall. Although the means by which snow is plowed can give rise to a triable issue of fact as to whether a dangerous condition was created (see Buckley v. Civiletti, 26 A.D.3d 844 [4th Dep't 2006]), here the record indicates that Defendant was actively involved in clearing snow from the Subject Sidewalk and began spreading salt shortly thereafter to melt ice which developed as a result. Plaintiff has not shown that the alleged icy condition existed for a sufficient length of time to permit Defendant to become aware of and remedy an unsafe situation. See Richer v. State of New York, 31 A.D.3d 943 (3rd Dep't 2006). Accordingly, it hereby is

ORDERED that Defendant's motion for summary judgment is granted, and the Complaint is dismissed in its entirety, and the Clerk of the Court is directed to enter judgment accordingly with costs and disbursements as taxed.

Dated: April 12, 2007

ENTER:



J.S.C.

JANE S. SOLOMON

FILED
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