**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF RICHMOND**

**----------X**

**ANTHONY BONVENTRE and ADELINE BONVENTRE,**

**Plaintiffs,**

**-against-**

**CITY OF NEW YORK and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,**

**Defendants.----------X**

**Decision and Order**

**Part C-2**

**Hon. Thomas P. Aliotta**

**Index No. 102193/05**
**Motion No. 766-001**

**The following papers numbered 1 to 4 used on this motion the 2nd day of May, 2007.**

| | **Papers Numbered** |
|---|---|
| Notice of Motion with Supporting Papers and Exhibits (Dated March 8, 2007) | 1 |
| Affirmation in Opposition (Dated March 15, 2007) | 2 |
| Affirmation in Opposition (Dated April 25, 2007) | 3 |
| Affirmation in Reply (Dated April 27, 2007) | 4 |

Upon the foregoing papers, the motion for summary judgment by defendant the City of New York (hereafter the"City") is granted, and the complaint and all cross claims against it are severed and dismissed.

This is an action for personal injuries allegedly sustained by plaintiff Anthony Bonventre (hereafter "plaintiff"), when he slipped and fell on ice covering a manhole cover in front of his Staten Island home on February 2, 2005.

A party may be held liable for a hazardous condition created on its premises as a result of the accumulation of snow and ice during a storm only upon a showing that it had actual or constructive notice of the dangerous condition, and that a sufficient period of time had elapsed since the cessation of the storm to take protective measures (*see* Drevis v City of New York, 257 AD2d 595).

At bar, both plaintiff and the co-defendant have failed to rebut the City's demonstration that it did not receive actual notice of the alleged condition. Moreover, while constructive notice may be established by demonstrating, e.g., that a recurring dangerous condition in the area of the slip and fall was routinely left unaddressed (*see* Solazzo v New York City Tr Auth, 21 AD3d 735, 736, affd 6 NY3d 734), there is no such evidence in the instant case. A general awareness that ice may form on manhole covers after a winter storm is insufficient to establish constructive notice (id., *see* Boucher v Watervliet Shores Assoc, 24 AD3d 855, 857).

Additionally, while the climatological records submitted by the City show that the last time it had snowed prior to plaintiff's fall was three days earlier, on January 30, 2005 (*see* City's Exhibit "F"), they also show that between February 1, 2005 and February 2, 2005, the temperature fluctuated between a low of nineteen (19) degrees to a high of forty (40) degrees. Given these temperature fluctuations and the freeze/thaw cycles generated thereby, the opposing parties have failed to raise a triable issue of fact as to notice, i.e., whether this specific ice patch had existed for a sufficient length of time to provide the City with constructive notice of its presence and a reasonable time to cure, or whether the City's response to the January 30th storm had in any fashion created the alleged hazardous condition (*see* Davis v City of New York, 255 AD2d 356, 357-358; Baumgartner v Prudential Ins. Co., 251 AD2d 358).

In the absence of any competent evidence to rebut the City's prima facie showing that it neither caused or created any condition which was a substantial cause of plaintiff's injury, the City is entitled to the dismissal of the complaint and all cross claims as asserted against it (*see* Forman v City of White Plains, 5 AD3d 434).

Accordingly, it is hereby

**ORDERED** that the motion for summary judgment by defendant the City of New York is granted, and the complaint and all cross claims as against this defendant are severed and dismissed; and it is further

Anthony Benventre, et ano. V City of New York, et ano.

**ORDERED** that the Clerk enter judgment accordingly.

The foregoing constitutes the Decision and Order of the Court.

Law Clerk to notify all parties of this Decision/Order.

DATED: 6/19/07

/s/_____
HON. THOMAS P. ALIOTTA, J.S.C.

Anthony Benventre, et ano. V City of New York, et ano.

ALL PARTIES NOTIFIED BY EVE/pt on _____

JONATHAN D'AGOSTINO & ASSOCIATES, P.C.
ATT: EDWARD J. PAVIA, JR., ESQ.
622 BARLOW AVENUE
STATEN ISLAND, NY 10312

CORPORATION COUNSEL OF THE
CITY OF NEW YORK
ATT: JENNIFER M. MARCUS, ESQ.
60 BAY STREET
STATEN ISLAND, NY 10301

RICHARD W. BABINECZ, ESQ.
ATT: PETER A. HAGAN, ESQ.
4 IRVING PLACE
NEW YORK, NY 10003