

<b>Hoffman v Memorial Sloan Kettering Cancer Ctr.</b>
2007 NY Slip Op 33251(U)
October 2, 2007
Supreme Court, Suffolk County
Docket Number: 0012762/2005
Judge: John J.J. Jones
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SHORT FORM ORDER

INDEX NO.: 0012762/2005  
SUBMIT DATE: 7/18/2007  
MTN. SEQ.#: 002

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 SUFFOLK COUNTY

Present:

HON. JOHN J.J. JONES, JR.  
Justice

MOTION DATE: 6/6/2007  
MOTION NO.: MG; CASEDISP

-----X

WILLA HOFFMAN, :

Plaintiff, :

-against- :

MEMORIAL SLOAN KETTERING CANCER  
CENTER, THE WOODLANDS I, L.L.C. THE  
WOODLANDS II, L.L.C., THE WOODLANDS III,  
L.L.C. and SENTRY PROPERTY MGT., INC., :

Defendants. :

-----X

THE WOODLANDS I, L.L.C., THE WOODLANDS  
II, L.L.C., THE WOODLANDS III, L.L.C., :

Third-Party Plaintiffs, :

-against- :

SENTRY PROPERTY MGT., INC., :

Third-Party Defendant. :

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Third-Party  
Index No.: 26-0047

Upon the following papers numbered 1 to 21 read on this motion for summary

judgment; Notice of Motion/Order to Show Cause and supporting papers 1-9; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers 10-11; Replying Affidavits and supporting papers 12-21; Other \_\_\_\_\_; it is

**ORDERED** that this motion by defendant/third-party plaintiff, The Woodlands I, L.L.C., The Woodlands II, L.L.C., and The Woodlands III, L.L.C., for an order granting summary judgment in their favor dismissing the complaint and all cross-claims against them is granted.

Plaintiff, Willa Hoffman, commenced this action to recover damages for personal injuries allegedly sustained on January 17, 2005 when she fell on premises located at 800 Veterans Memorial Highway, Hauppauge, New York, described in the bill of particulars as the parking lot of the Memorial Sloan-Kettering Cancer Center (cancer center). Although the caption includes Memorial Sloan-Kettering Cancer Center as a named defendant, the claims against it were discontinued by stipulation filed on or about August 18, 2006. The plaintiff testified at her deposition that on the day of the accident she drove from her home to the cancer center to have some sutures removed. She noticed that there was “an inch or two” of powdered snow on her car and in her driveway, and it was “slightly flurrying.” She left her home at about 8 o’clock in the morning, drove to the cancer center and parked her car in the parking lot. Snow covered the ground. She opened the door to her car, stepped out and took two steps and slipped. After she fell, the plaintiff noticed that there was ice underneath the snow.

James C. Haynes, the president of Sentry Property Management, Inc. (Sentry), testified at a deposition that Sentry had a contract for snow removal for the parking lot and walkways, and that he arrived at the premises at approximately 8:30 AM in the morning of plaintiff’s accident. Other Sentry employees had arrived at approximately 6:45 AM to clear sidewalks, apply ice melt, plow and sand parking lots. It was snowing when Haynes arrived at the premises, and about an inch or an inch-and-a-half of snow had fallen. He snow-plowed the parking lots, but could not recall having observed any accumulation of ice. Haynes also testified that his company would “salt sand everything after every storm” and during a snow event. Caryn Lerner, an employee of the cancer center, testified at a deposition that she saw the plaintiff in the parking lot on January 17, 2005 for a brief second and then saw her being assisted by a man. She also testified that it was cold outside on the morning of the accident and it had snowed. While the witness initially indicated that she believed the snow had stopped by the time she arrived at work, she also testified that she did not know for sure and did not remember whether it had stopped snowing.

The law is well-established that there is no duty to remove snow and ice while a

storm is in progress (*Joseph v Danice Stores of Nostrand Ave., Inc.*, 290 AD2d 536, 537, 736 NYS2d 692 [2d Dept 2002]). Moreover, a party in possession or control of real property may be held liable for the failure to remove accumulated snow and ice only after a reasonable time subsequent to the ending of the storm (*Joseph v Danice Stores of Nostrand Ave., Inc.*, *supra* at 290 AD2d 537, citing *Grau v Taxter Park Assoc.*, 283 AD2d 551; *Tillman v DeBenedictis & Sons Bldg. Corp.*, 237 AD2d 593, 594). Here, there is no evidence that a hazardous condition was either created or exacerbated by any acts of the defendants and, furthermore, no evidence to support any claim that Sentry owed a duty of care to the plaintiff (see *Espinal v Melville Snow Contrs., Inc.*, 98 NY2d 136, 773 NE2d 485, 746 NYS2d 120 [2002]). Since the defendants' motion searches the record, the granting of summary judgment dismissing the complaint in its entirety is appropriate (see CPLR 3212 [b]; see also *Maldonado v Novartis Pharms. Corp.*, 18 AD3d 720, 795 NYS2d 759 [2d Dept 2005]).

Settle judgment on notice.

DATED: 2 Oct. 07

  
 \_\_\_\_\_  
 HON. JOHN J.J. JONES, JR.  
 J.S.C.

CHECK ONE:  FINAL DISPOSITION

NON-FINAL DISPOSITION

TO:

**LITE & RUSSELL**

By: John Porchia, Esq.

Attys. for Plaintiff

212 Higbie Lane

West Islip, NY 11795

**PEREZ, FUREY & VARVARO**

By: John W. Quinn, Esq.

Attys. for Defendants/Third-Party Plaintiffs

Woodlands

333 Earle Ovington Boulevard

P.O. Box 9372

Uniondale, NY 11553-3644

**TONETTI & AMBROSINO, ESQS.**  
By: Joseph C. Tonetti, Esq.  
Attys. for Third-Party Defendant  
*Sentry Property Mgt.*  
548 West Jericho Turnpike  
Smithtown, NY 11787

**KAUFMAN, BORGEEST & RYAN**  
Attys. for Defendant  
*Memorial Sloan Kettering Cancer Center*  
1305 Franklin Avenue - 3<sup>rd</sup> Floor  
Garden City, NY 11530