

| |
|--|
| Corridan v Public Admin. of Suffolk County |
| 2008 NY Slip Op 30188(U) |
| January 17, 2008 |
| Supreme Court, Suffolk County |
| Docket Number: 0023662/2003 |
| Judge: Robert W. Doyle |
| Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case. |
| This opinion is uncorrected and not selected for official publication. |

SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 10-29-07
Mot. Seq. # 003 - MD

| | | |
|---|---|------------------------------------|
| -----X | | |
| JEANETTE CORRIDAN and PATRICK | : | DAVID W. McCARTHY, ESQ. |
| CORRIDAN, | : | Attorneys for Plaintiffs |
| | : | 33 Walt Whitman Road, Suite 204 |
| | : | Huntington Station, New York 11746 |
| | : | |
| - against - | : | |
| | : | |
| THE PUBLIC ADMINISTRATOR OF SUFFOLK | : | JOHN T. RYAN & ASSOCIATES |
| COUNTY, as Administrator of the Estate of | : | Attorneys for Defendants |
| FREDERICK MICHAEL WEBB, JR. a/k/a | : | 633 East Main Street, Suite 3 |
| FREDERICK M. WEBB, JR., deceased and THE | : | Riverhead, New York 11901 |
| PUBLIC ADMINISTRATOR OF SUFFOLK | : | |
| COUNTY, as Administrator of the Estate of | : | |
| BERTHA T. WEBB a/k/a BERTHA WEBB, | : | |
| deceased, | : | |
| | : | |
| Defendants. | : | |
| -----X | | |

Upon the following papers numbered 1 to 15 read on this motion for partial summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 12; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 13; Replying Affidavits and supporting papers 14 - 15; Other____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by plaintiffs for partial summary judgment against the defendants on the issue of liability, is denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff, Jeanette Corridan, when on February 14, 2003, she slipped and fell on ice at the home of defendants Frederick M. Webb, Jr. and Bertha Webb located at 825 Carlton Road, in West Babylon, New York. At the time of the incident, plaintiff Jeanette Corridan was working at the Webb home as a home health aide. The complaint alleges that the ramp leading to the front door of the home had ice on it due to the fact that a leader from the gutter deposited water onto the aforementioned ramp. Plaintiff Patrick Corridan, Jeanette Corridan's husband, sues derivatively. The defendants served an answer to the

complaint containing affirmative defenses. Thereafter, both Mr. and Mrs. Webb passed away, and the Public Administrator of Suffolk County as Administrator of the Estate of Frederick M. Webb, Jr. and the Estate of Bertha Webb was substituted as party defendants by the Hon. Daniel J. Loughlin. The plaintiffs were also granted permission to file and serve a supplemental summons and amended complaint, and the defendants then served amended answers which again contained affirmative defenses.

The plaintiffs now move for partial summary judgment on the issue of liability upon the ground that the defendants are negligent, have no defense to the action, and there exists no issues of fact. In support of their motion, the plaintiffs submit, *inter alia*, the pleadings, the deposition testimony and affidavit of plaintiff Jeanette Corridan, and a photograph of the ramp at issue.

At her deposition, the plaintiff testified in pertinent part that she had been employed as a home health aid assigned to Mrs. Webb since 2001, working five days a week from 9:00 a.m. to 5:00 p.m. She also testified to the effect that a wood ramp leads to the front door, and that since there was snow piled up against a back door and side door, everyone always used the ramp. The plaintiff explained that the ramp was the only way to access the front door, and the ramp had a handrail on one side. In addition, she stated that part of her duties at the Webb home included taking out the garbage at the end of the day, and that the garbage cans were located at the bottom of the ramp. She testified that the incident happened at approximately 4:45 p.m., when it was still light outside. The plaintiff stated that as she walked down the ramp, she carried the garbage bag in her right hand and the handrail was to her left. She alleges that she slipped and fell, and that when she looked to see what made her fall, there was ice. She described the ice as a small portion that froze right underneath the drain pipe, and that it was clear and that she could not see it. When she was asked if she made some determination as to where the ice came from, the plaintiff responded, "The snow had been on the roof and it was melting into the gutter, and water was running down the drain pipe right onto the wheelchair ramp and freezing."

The plaintiff also testified at her deposition that it had snowed a day or two before the accident and that it was a considerable amount of snow. She further stated that she did not use the handrail when she was walking down the ramp, and that when she started walking down the ramp, she was looking at the end of it where the garbage pail was located. When the plaintiff was asked if she ever looked down to where she was placing her feet, she answered, "No, I didn't feel that I had to." She additionally stated that she never made a complaint to anyone about snow or ice on the ramp before the incident, and that she never noticed the condition before her fall.

In a supporting affidavit, plaintiff Jeanette Corridan, further alleges that from her arrival in 2001 to the date of her fall in 2003, the leader from the gutter opened onto the ramp and that during that time period no changes or alterations were made to the ramp or the leader and gutter. She maintains that it was in the area where the leader opened onto the ramp that she fell and where the ice was located. The plaintiffs submit a photograph of the ramp which shows the leader running down the side of the house and stopping at the ramp with a black accordion extension diverting the water from the leader to the bottom of the ramp. Plaintiff Jeanette Corridan alleges in her affidavit that she has reviewed this photograph, and other than the black accordion extension shown in the photograph, it is an accurate depiction of the ramp at the time of her fall. She contends that at the time of her fall, the black accordion extension did not exist.

The plaintiffs argue that based upon this evidence, it cannot be disputed that plaintiff slipped and fell on ice on the ramp owned and maintained by the defendants, that ice was deposited onto the ramp by the leader, and that the defendants created the condition which caused the ice to form on the ramp. The plaintiffs claim that they have, therefore, established a prima facie case of negligence against the defendants. They assert further that even if, assuming arguendo, the defendants did not create the condition, they had actual and constructive notice of the hazardous condition, since the gutter system discharged water directly onto the ramp since 2001. The plaintiffs allege that it was clearly visible that the leader opened onto the ramp, the primary means of ingress and egress to the premises, and that the condition existed for more than one year prior to the plaintiff's fall, giving the plaintiffs ample time to remedy the condition. The plaintiffs contend that the foregoing establishes entitlement to judgment in their favor on liability as a matter of law.

The defendants oppose the plaintiffs' motion arguing that there are a number of factual issues which should be presented to a jury for their decision. The defendants assert that their answer raises the affirmative defense that the plaintiff's culpable conduct caused or contributed to the incident. They point to the plaintiff's deposition testimony wherein she testified that she did not use the handrail while going down the ramp despite the fact that the handrail was present on her left and her left hand was free while she carried the garbage bag in her right hand. They further point to that portion of the plaintiff's testimony wherein she stated that she did not see the ice and that she did not look at the ramp to observe the condition of the ramp prior to walking on it. The defendants additionally highlight the fact that the plaintiff was aware that a considerable amount of snow had fallen a day or two before the incident. Based upon this testimony, defendants argue, numerous questions of fact exist with regard to this matter, as it is clear the plaintiff never used the handrail that was available, never looked where she was going, and was aware that a snow and ice condition existed prior to her fall. Finally, defendants' attorney notes that since the defendants are deceased and were unavailable to testify in their own behalf, their lack of testimony raises a question of fact as to whether they created the condition and if the condition existed for a significant time to have provided constructive notice.

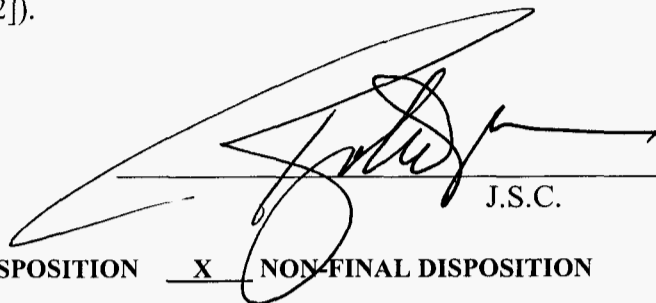
It is well settled that a landowner has a duty to maintain his or her property in a reasonably safe condition so as to prevent foreseeable accidents (*White v Gabrielli*, 272 AD2d 469, 707 NYS2d 505 [2000]). In order to establish a prima facie case of negligence in a slip and fall case, the plaintiff must prove that the defendant created the condition which caused the accident, or that the defendant had actual or constructive notice of the condition (*Golding v Powell & Dempsey, Inc.*, 247 AD2d 510, 669 NYS2d 323 [1998]; *Kraemer v K-Mart Corporation*, 226 AD2d 590, 641 NYS2d 130 [1996]). To constitute constructive notice, "a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit" a defendant to discover and remedy it (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837; 501 NYS2d 646, 647[1986]). Moreover, evidence that a defendant created the condition may be sufficient to establish that the defendant had actual notice thereof (*Petri v Half Off Cards, Inc.*, 284 AD2d 444, 727 NYS2d 455 [2001]; *see also, Patterson v New York Transit Authority*, 5 AD3d 454, 773 NYS2d 417 [2004]).

In the case at hand, the evidence demonstrates that the ice upon which plaintiff Jeanette Corridan fell was created by defendants due to the discharge of water onto the ramp from the defendants' leader and gutter and the water subsequently freezing. The defendants have failed to tender any evidence showing that they were not responsible for this icy condition (*see, Corrigan v Spring Lake Building*

Corridan v Public Administrator
Index No. 03-23662
Page No. 4

Corp., 23 AD3d 604, 804 NYS2d 412 [2005]). Thus, the Court finds that the defendants were negligent as a matter of law. However, whether, under the circumstances herein, plaintiff Jeanette Corrigan's failure to hold onto the railing and look down at the ramp, constitutes comparative negligence is an issue of fact (*see, Sewitch v LaFrese*, 41 AD3d 695, 839 NYS2d 114 [2007]; *Ettari v 30 Rampasture Owners, Inc.*, 15 AD3d 611, 790 NYS2d 540 [2005])). Accordingly, since questions of fact exist as to whether plaintiff Jeanette Corrigan was comparatively negligent, plaintiffs' motion for summary judgment must be denied (*see, Posner v Hendler*, 302 AD2d 509, 755 NYS2d 255 [2003]; *Jorif v Jorif*, 188 AD2d 449, 591 NYS2d 48 [1992]).

Dated: JAN 17 2008



J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION