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

PRESENT : DONNA M. MILLS **PART** 21
Justice

RAMOS, JACQUELINE

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

INDEX NO. 100317/06

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL NO.

The following papers, numbered 1 to 3 were read on this motion for summary judgment.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits– Exhibits....	1+2
Answering Affidavits– Exhibits	3
Replying Affidavits	

CROSS-MOTION: ✓ YES ____ NO

Upon the foregoing papers, it is ordered that the motion is hereby decided in accordance with the attached memorandum decision.

Dated: 2/5/08

J.S.C.

FILED
FEB 13 2008
COUNTY CLERK'S OFFICE
NEW YORK

Check one: ____ FINAL DISPOSITION ✓ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

----------x

Jacqueline Ramos,

Index No. 100317/2006

Plaintiff,

-against-

New York City Transit Authority,

Defendant.

----------x

DONNA M. MILLS, J.S.C.

In this personal injury lawsuit, plaintiff Jacqueline Ramos alleges that on March 2, 2005 she slipped and fell down a staircase at the New York City Transit Authority (hereinafter "NYCTA") 225th Street/Marble Hill Train Station, in the city, county and state of New York. The Defendant, NYCTA now moves, pursuant to CPLR §§3211 and 3212, for summary judgment on the ground that there are no triable issues of material fact and that plaintiff has failed to state a cause of action against it. The plaintiff opposes the motion and cross-moves for summary judgment on the issue of liability. For the reasons stated herein, the motion and the cross motion are denied.

BACKGROUND

The plaintiff Jacqueline Ramos alleges that at approximately 8:45 p.m. on the day in question, while going down the stairway leading to the elevated northbound 1/9 train platform at the 225th street station owned by the defendant, she slipped and fell on a stair covered with snow and/or ice. She claims that the NYCTA was

negligent in the maintenance of the aforementioned stairway and allowed for the accumulation of snow on said stairway. The plaintiff further maintains that as a result of the slip and fall she sustained permanent injuries to her left knee, left elbow, and left foot. The NYCTA maintains that it cannot be held liable for any injury the plaintiff sustained, on the ground that the plaintiff failed to provide proof demonstrating that NYCTA had actual or constructive notice of the snow condition (as required by case law to hold a property owner liable in a slip and fall accident involving snow and/or ice), and it is not required to remove snow from the premises as it falls.

DISCUSSION

CPLR §3212(b) further provides that summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact."

The NYCTA's motion and the Plaintiff Jacqueline Ramos' cross motion must both be denied pursuant to CPLR §3212. It is evident based on the facts of this case that a genuine issue of material fact exists as to whether or not it was actually snowing at the time of the plaintiff's alleged slip and fall. The NYCTA argues that at plaintiff's statutory hearing and examination before trial ("EBT") she clearly stated that at the time the accident occurred, it was snowing, and also that she was not aware of how long it was

snowing prior to her fall. The defense claims that the plaintiff failed to demonstrate that the NYCTA had actual or constructive notice with regard to the snow condition, therefore it cannot be held liable for plaintiff's injuries. In opposition, Plaintiff argues that on the day in question sixteen hours prior to the accident only trace amounts of snow fell as evidenced in certified weather reports from the National Climatic Data Center.

In order to receive summary judgment in a slip-and-fall case the defendant "has the initial burden of making a prima facie showing that it neither had actual or constructive notice of its existence," (Frazier v. City of New York WL 193266 N.Y.A.D. 2 Dept., 2008). Additionally, while the Court has ruled that "a property owner will not be held liable in negligence for a plaintiff's injuries sustained as the result of an icy condition occurring during an ongoing storm or for a reasonable time thereafter" (Solazzo v New York City Tr. Auth., 6 N.Y.3d 734, 735, 843 N.E.2d 748, 810 N.Y.S.2d 121 [2005]), the plaintiff has provided evidence refuting the NYCTA's claim that it had no actual or constructive notice of the purported dangerous condition. On March 1, 2005 the day before the accident the NYCTA Station Supervisor Paulie McCrae inspected the stairways and reported that they were "unsatisfactory" after which NYCTA cleaners were instructed to clean said stairways. The NYCTA has not produced evidence showing that this condition was met and that the accumulation of snow from the prior day was removed.

In prima facie cases of negligence involving a slip and fall on snow and/or ice the Court has determined that "a property owner will be liable for a slip-and-fall involving

snow and ice on its property only when it created the dangerous condition that caused the accident or had actual or constructive notice thereof," (Nielsen v. Metro-North Commuter R.R. Co. 30 A.D.3d 497, 817 N.Y.S.2.d 110, [2006]). The Court held in Sangiacomo v. State of New York, 13 Misc.3d 1246(a) [N.Y.Ct. Cl. 2006], that "where there is insufficient proof that the defendant created or had actual notice of the condition, liability turns on the issue of whether defendant had constructive notice. '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 defendant's employees to discover and remedy it'" (Gordon v American Museum of Natural History, 67 N.Y.2d 836, 837, 492 N.E.2d 774, 501 N.Y.S.2d 646 [1986]).

Here, the NYCTA has not established that its failure to comply with its own inspector's recommendation that the stairs be cleaned did not create the condition which caused the plaintiff's injuries, (Gil v. Manufacturers Hanover Trust Co. 39 A.D.3d 703 [2nd Dept. 2007]). In Gil v. Manufacturers Hanover Trust Co., supra, a slip and fall personal injury suit involving snow, the Court denied summary judgment to the defendant because "the bank failed to establish as a matter of law that its snow removal procedures…did not create the condition which caused the plaintiff's injuries." Similarly, the NYCTA has failed to establish as a matter of law that it is free from any negligence pertaining to the injuries sustained by the plaintiff.

CONCLUSION

Accordingly, neither party has established its entitlement to Summary Judgement.

Thus for the reasons stated herein, defendant the New York City Transit Authority's motion for summary judgment is denied, and plaintiff Jacqueline Ramos' cross-motion for summary judgment is similarly denied.

This opinion constitutes the decision and order of the court.

Dated 2/5/08

J.S.C

Check one: ___FINAL DEPOSITION ___NON-FINAL DEPOSITION