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

PRESENT: [redacted] Justice

PART 55

Index Number : 101291/2009

ROMAN, LYDIA

VS.

MET-PACA

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE 2/26/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... 1-3
Answering Affidavits — Exhibits 4-5
Replying Affidavits 6

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided by the annexed Memorandum decision and order.

Dated: 6-22-10

[redacted] J.S.C.

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

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

LYDIA ROMAN,

Plaintiff,

-against-

MET-PACA II ASSOCIATES, L.P.,

Defendant,

----------X

Index No. 101291/2009
DECISION AND ORDER

SOLOMON, J.:

Plaintiff Lydia Roman (Roman) is a tenant at 149 East 118th Street, in Manhattan (the Building). She sues the owner of the building, defendant Met-Paca II Associates, L.P. (Met-Paca), for damages from injuries suffered when she slipped and fell on the Building's handicap access ramp. Met-Paca moves for summary judgment on the ground that it had no notice of the hazardous condition and did not create it.

There was snowfall on December 22, 2008. December 23 was a clear day, with no snow or rain, though the temperature was sub-freezing. At 6:00 A.M., Noel Castro (Castro), the Building's superintendent shoveled and salted the ground including the access ramp. He did so again at 9:30 A.M. and found no ice accumulation (Castro EBT, attached to Shapiro Affirmation, Ex. G, p. 15-16, 24 and 49).

At 10:30 A.M. Roman used the access ramp to exit the Building, without incident. She returned at 11:30 A.M., also

without incident. Shortly thereafter, she again exited the building by way of the exit ramp when she allegedly slipped and fell on a patch of ice.

Met-Paca argues that it acted reasonably in ensuring that the ramp was safe for pedestrians. In support, it supplies Castro's deposition transcript, as referenced above, and Roman's own deposition in which she stated that she did not notice any ice prior to her fall, despite traversing the ramp more than once (Roman EBT, attached to Shapiro Affirmation, Ex. F, p. 34-5). It also supplies photographs of the scene, which show salt on the ramp (Photographs, attached to Shapiro Affirmation, Ex. H).

Roman counters that questions of fact exist regarding the sufficiency of the ice removal technique Castro used, and whether it exacerbated the situation. She then argues that Met-Paca had constructive notice of the condition because it knew that melt water from the roof could drip onto the ramp (Castro EBT, at p. 19). In support, she notes that Castro testified that he was worried that runoff could re-freeze on the ramp (Id., at p. 30) and that he reported this worry to building management (Id., at p. 41). Roman further supplies the testimony of Olga Seijo, another tenant (and her former sister-in-law), who stated that the area looked under-salted, and what salt there was looked "old" (Seijo EBT, attached to Affirmation in Opposition, Ex. D, p.28).

In reply, Met-Paca claims that there is no evidence that it had notice because Castro testified that "this is the first time that the ice accumulated like that. . . . This is the first time it ever happened to me" (Id., at 41-2).

In a slip and fall action, a plaintiff must prove the existence of a dangerous condition and that the defendant had either caused or had actual or constructive notice of that condition (*Gordon v. American Museum of Natural History*, 67 NY2d 836 [1986]). A "general awareness" that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused plaintiff's fall" (*Piacquadio v. Recine Realty Corp.*, 84 NY2d 967 [1994]).

Roman's argument that Met-Paca had actual knowledge of a hazardous condition because Castro found ice on the ramp at 6:00 A.M. is unpersuasive. Castro's uncontested testimony is that he remedied that condition. Moreover there is no evidentiary connection between the removed ice and the ice that Roman allegedly slipped on.

Roman next attempts to establish Met-Paca's actual knowledge of a recurring hazardous condition because Castro admitted that he reported to management his worry that melt water could freeze on the ramp. However, Roman ignores Castro's further statement that he had never seen ice accumulate that way. This candor shows Met-paca's general awareness of a potential

problem, but there is no evidence of any earlier complaint about an icy condition on the ramp, and so Roman's argument that the condition was recurring is not proved.

In attempting to establish constructive notice, Roman cites to Castro's testimony, as follows:

> Q. So you saw [the ramp] was wet. And please tell me what you did next? . . .
> A. What I did next, I threw more salt on the ground to make sure it doesn't freeze, or it doesn't freeze again. So I threw more salt on the [ramp] again. . . .
> Q. What led you to believe that it might freeze again?
> A. Well, it was sunny, but it was windy.
> Q. So the windiness made it feel more cold?
> A. Yes.
> Q. But it actually was with the sun out?
> A. Yes it was.
> Q. So it was your thought that there was a risk that the wet spot would freeze because of the wind?
> A. Well, yes, it will, yes.

(Castro EBT, p. 30-31)

> Q. Do you know whether anyone ever tried to remedy the problem with ice melting and coming off the roof and the fire escapes landing at the bottom of that ramp?
> A. Well, no, no. I don't know. Because, it's like, all I just do is just report it. I report it to the owners, and then they take care of it. If it's a matter that it's going to danger somebody, they will take care of it.
> Q. For how long prior to December 23, 2008, did we have this recurring condition of ice melting on the roof and fire escapes and falling and accumulating on that ramp?
> A. Well, this is the first time that the ice accumulated like that.

(Id., p. 41-42)

This testimony does not establish constructive notice of a recurring condition.

Roman's contention that questions of fact exist regarding whether Castro's actions exacerbated the condition is unfounded. While one may be held liable if his snow removal efforts increased the danger of slipping (*Joseph v. Pitkin Carpet, Inc.*, 44 AD3d 462 [1st Dept, 2007]), Castro's actions--shoveling and removing snow and ice, and repeatedly salting a clear area to prevent ice formation--does not increase the danger of ice formation.

Accordingly, it hereby is

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it further is

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: June 22, 2010

Enter:

J.S.C.