

**Sivaganeshamoorti v City of New York**

2013 NY Slip Op 31400(U)

July 1, 2013

Supreme Court, Richmond County

Docket Number: 101447/09

Judge: Thomas P. Aliotta

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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CHANTHIRATHACHAN SIVAGANESHAMOORTI, Part C-2

Plaintiff, Present:

-against-

HON. THOMAS P. ALIOTTA

THE CITY OF NEW YORK, ALIM TRUMIC and  
SUZANNA TRUMIC

DECISION AND ORDER

Defendants.

Index No. 101447/09

Motion Nos. 2610-001  
647-002

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The following papers numbered 1 to 6 were marked fully  
submitted on the 9<sup>th</sup> day of May 2013:

Papers  
Numbered

Notice of Motion for Summary Judgment by Defendant The City of New York (Affirmation in Support) (Dated: August 30, 2012).....	1
Affirmation in Opposition of Defendants Alim and Suzanna Trumic (Dated: January 30, 2013).....	2
Notice of Motion for Summary Judgment by Defendants Alim and Suzanna Trumic (Affirmation, Memorandum of Law in Support) (Dated: February 25, 2013).....	3
Reply Affirmation in Further Support of City's Motion (Affidavit of Richard Nichilo dated February 20, 2013) (Dated: February 26, 2013).....	4
Plaintiffs' Affirmation in Opposition (Affidavit of Howard Altschule dated November 30, 2012) (Dated: March 18, 2013).....	5
City's Affirmation in Opposition to Trumics Defendants' Motion (Dated: March 19, 2013).....	6

Upon the foregoing papers, the motion (No. 2610-001) and cross  
motion (No. 647-002) for summary judgment and dismissal of the  
complaint against defendants The City of New York (hereinafter the  
"City") and Alim Trumic and Suzanna Trumic (hereinafter,

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collectively, the "Trumics") are granted, and the complaint is dismissed.

This matter arises out of a December 22, 2008 slip-and-fall on an icy sidewalk located at the corner of Cebra Avenue and Rosewood Place, Staten Island, New York. At the time of the incident,<sup>1</sup> plaintiff was escorting his two minor children to a bus stop located on Victory Boulevard for their trip to school. Plaintiff claims that as he approached the sidewalk in front of 2 Rosewood Place (a three-family house owned by the Trumics and positioned on the corner of Rosewood Place and Cebra Avenue), he saw that the sidewalk was covered with "snow on [top of] ice" (City's Exhibit F, p 34). He subsequently "slipped on ice" (*id.* at 32), which he described as "spread out, not heaped, [and] shiny, like glass and snow" (*id.* at 33). Plaintiff "thought [he could] cross over" the ice (*id.* at 94) and "decided to walk very carefully, [but] in spite of it... [he] fell" (*id.*).

The National Weather Service Climatological data from Newark Liberty Airport reflects the following: (1) 4.8 inches of snow fell on December 19, 2008, followed by .6 inches on December 20, 2008 and .9 inches on December 21, 2008; (2) the precipitation began in the late morning of December 19, 2008 and continued (largely

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<sup>1</sup>Plaintiff testified that the accident occurred in the "morning, 7:00, 7:45, 7:45 to 8:00" (*see* City's Exhibit F [Plaintiff's September 24, 2010 EBT] p 15); the Notice of Claim lists the time as "approximately 8:00 a.m." (*see* City's Exhibit A).

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uninterrupted) until 2:00 p.m. on December 21, 2008; (3) the temperature variously exceeded and dipped below the freezing mark on both December 19, 2008 and December 21, 2008, but remained below freezing on December 22, 2008 (see City's Exhibit H).

In moving for summary judgment dismissing the complaint as against it, the City maintains that: (1) in light of the climatological records reflecting fluctuations in temperature above and below the freezing mark in the hours before the accident (as well as the attendant cycles of thawing and re-freezing), it possessed neither actual nor constructive notice of the icy condition which allegedly caused plaintiff's fall, and (2) plaintiff's fall occurred prior to expiration of the "reasonable time" within which the City was required to remedy the icy condition following the cessation of snowfall. With regard to the latter, the City argues that pursuant to §16-123 of the Administrative Code of the City of New York, the abutting landowners (the Trumics) had four hours to remove the snow and ice from their abutting sidewalk after the snow had ceased falling (excepting the hours between 9:00 p.m. and 7:00 a.m.), and that the City had a reasonable time after the expiration of this time period within which to abate any dangerous condition<sup>2</sup>. As to the former,

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<sup>2</sup>According to the City's calculation, if the snow stopped falling at about 2:00 p.m. on December 21, 2008, the Trumics had until 6:00 p.m. to clear the abutting sidewalk. Consequently, the City had a reasonable time **after** 6:00 p.m. on December 21, 2008 within

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the City argues that the uncontroverted evidence of temperature fluctuations above and below the freezing mark in the days before the accident serves to negate plaintiff's claim of actual or constructive notice of the alleged hazardous condition (*cf.* Administrative Code of the City of New York §7-201).

In their cross motion for summary judgment, the Trumics maintain, *inter alia*, that the location of the accident as marked by plaintiff on a photograph during his EBT (see Trumics's Exhibit L) indicates that the accident site was actually a "pedestrian ramp" rather than an abutting "sidewalk", and that section 7-210 of the City's Administrative Code (added LL 49/2003, eff. September 14, 2003) was ineffective to transfer tort liability for the negligent maintenance of **pedestrian ramps** to abutting owners. Alternatively, the Trumics argue that there is no evidence that their snow removal efforts (routinely impeded by Sanitation plows "throwing snow back onto the sidewalk" [see Trumics's Exhibit K, p 33]) either created or increased any hazardous condition on the sidewalk, particularly since the area in question would have been subject to cycles of thawing and re-freezing in the hours before the accident.

In opposition to summary judgment, plaintiff relies, *inter alia*, on the November 30, 2012 affidavit of Howard Altschule, a

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which to act.

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certified meteorologist, who concluded on the basis of, e.g., climatological data, that "any thick layers of ice or compacted snow that were present at the time of the slip and fall...had been present for several days before the incident itself and were likely the result of snow and ice that had not been sufficiently cleared after the winter storm events that occurred on December 19-20, 2008 and during the morning hours of December 21, 2008." In addition, plaintiff's expert opined that "had the ice that formed between 8:51 pm and 10:51 pm on December 21, 2008 been sufficiently treated, remedied or removed, then the ice [on which plaintiff] slipped and fell...likely would not have existed" (see Plaintiff's Affirmation in Opposition).

It is well established that "a municipality is not liable in negligence for injuries sustained by a pedestrian who slips and falls on an icy sidewalk unless a reasonable time has elapsed between the end of the storm giving rise to the icy condition and the occurrence of the accident" (Valentine v. City of New York, 86 AD2d 381, 383, *affd* 57 NY2d 932). Moreover, it is equally well settled that a "[g]eneral awareness that snow or ice **may** be present is legally insufficient to constitute notice of the particular condition that caused a plaintiff to fall" (Krieger v. McDonald's Rest. of NY, Inc., 79 AD3d 1827, 1829, *lv dismissed* 17 NY3d 734; emphasis added). Finally, notwithstanding the requirement in

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section 16-123(c) of the Administrative Code of the City of New York mandating the removal of snow and ice from abutting sidewalks within four hours after the snow stops falling, it has been held more generally that “when weather conditions cause property to become dangerous by reason of the accumulation of ice, the law affords the landowner a reasonable time after the...temperature fluctuation which caused the hazardous condition to take corrective action” (Bullard v. Pfohl’s Tavern, Inc., 11 AD3d 1026, 1027 [internal quotation marks omitted]; see Scott v. Redl, 43 AD3d 1031, 1033; see also Paguay v. Fischel, 36 Misc 3d 1235[A] [Sup Ct Queens Co 2012]).

In this case, defendants have made a *prima facie* showing that they neither created nor had actual or constructive notice of the subject ice patch and/or a reasonable time after the cessation of snowfall to remedy the condition. In addition, the (speculative) opinion of plaintiff’s meteorologist as to the “likely” timing of the formation of the icy condition which purportedly caused plaintiff to fall, *i.e.*, between 8:51 p.m. and 10:51 p.m. on the evening preceding the accident, serves to further insulate the Trumics from liability, since the Administrative Code absolves owners of the duty to clear snow and ice from abutting sidewalks between the hours of 9:00 p.m. and 7:00 a.m. Here, the accident occurred somewhere between 7:00 a.m. and 8:00 a.m. (see Footnote

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1). Moreover, no evidence has been presented that the Trumics's snow removal efforts created the dangerous condition which allegedly caused the accident by making the sidewalk more dangerous (see Scott v. Redl, 43 AD3d at 1032).

On this view of the case, it is not necessary for the Court to pass on any further issue.

Accordingly, it is

ORDERED that the motion and cross motion for summary judgment are granted, and it is further

ORDERED that the complaint is dismissed, and it is further

ORDERED that the Clerk enter judgment accordingly.

E N T E R,

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/S/

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HON. THOMAS P. ALIOTTA  
JUSTICE OF THE SUPREME COURT  
J.S.C.

Dated: July 1, 2013