

**Rodriquez v Woods**

2013 NY Slip Op 33730(U)

February 28, 2013

Supreme Court, New York County

Docket Number: 1/03679/09

Judge: Geoffrey D. Wright

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: GEOFFREY D.S. WRIGHT PART 62  
*Justice*

FRANCISCA RODRIGUEZ,  
Plaintiff/Petitioner(s)

INDEX NO. 1103679/09  
MOTION DATE \_\_\_\_\_

- v -

WILLIE WOODS, LANA WOODS and THE CITY OF NEW YORK,  
Defendant(s)/Respondent(s)

MOTION SEQ. NO. 003

The following papers, numbered 1 to 2 were read on this motion to/for dismiss the complaint against the City of New York

**FILED**

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_  
Other \_\_\_\_\_

**NEW YORK  
COUNTY CLERKS OFFICE**

PAPERS NUMBERED

1

2

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered that this motion/petition by the Defendant City of New York, to dismiss the complaint is granted a/p/o.

This case is to be transferred to a non City part.

Dated: Feb 28, 2013

GEOFFREY D. WRIGHT

*GC*  
AISC

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 62

-----X  
FRANCESCA RODRIGUEZ,

Plaintiff-Petitioner(s),

-against-

WILLIE WOODS, LANA WOODS and  
CITY OF NEW YORK,

Defendant-Respondent(s),  
-----X

Index #103679/09  
Motion Cal. #  
Motion Seq. #  
**DECISION/ORDER**  
Pursuant To Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion to: dismiss all claims against the City of New York

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	2
Answering Affidavits & Exhibits Annex	
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion) & Exhibits Annexed	
Supporting Affirmation	

**FILED**  
MAR 11 2013  
NEW YORK  
COUNTY CLERKS OFFICE

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff Francesca Rodriguez, was injured when she slipped and fell on ice and snow in front of 339 Convent Avenue. The City of New York now moves to dismiss the complaint and any cross-claim against it.

For the three days prior to the December 23, 2008 accident, snow fell on December 19, December 20, December 21, including sleet and freezing rain on the 21<sup>st</sup>.

When there is a snow storm, the City is given a nonspecific reasonable amount of time to clean the streets, and then the sidewalks [*COOKE v. CITY OF NEW YORK*, 300 A.D.2d 338, 751 N.Y.S.2d 536, 2002 N.Y. Slip Op. 09149; *CASTILLO v. THE CITY OF NEW YORK*, 2003 WL 25669355, "Under Valentine and its progeny and where there is no alleged actual or constructive notice of this precise snow condition, the city has been found to not be liable for an accident occurring as a result of severe snowfall with below freezing temperatures following the snowfall. *Martinez v. Columbia Presbyterian*, 238 A.D.2d 286, 656 N.Y.S.2d 271 (1st Dept.1997); *Cheung v. City*, 234 A.D.2d 91, 650 N.Y.S.2d 687 (1st Dept.1996)."]

Snow on the sidewalk for 72 hours before and accident has been held to insufficient to support a successful claim [*EPSTEIN v. CITY OF NEW YORK*, 250 A.D.2d 547, 673 N.Y.S.2d 141, 1998 N.Y. Slip Op. 05938, {citing *CHEUNG v. CITY OF NEW YORK*, 234 A.D.2d 91, 650 N.Y.S.2d 687}], see also *EPSTEIN v. CITY OF NEW YORK*, 250 A.D.2d 547, 673 N.Y.S.2d 141, 1998 N.Y. Slip Op. 05938].

Complicating things for the Plaintiff is her own speculative statement, in her affidavit, that the icy patch on which she slipped “was one inch thick, flat, hard and dirty, as if it had existed for several days.” This is precatory language and a “feigned issue of fact insufficient to defeat motion.” [*MARZAN v. THE CITY OF NEW YORK*, 2011 WL 2138253 (N.Y.Sup.) (Trial Order), 2011 N.Y. Slip Op. 31346(U)]. The cases relied upon by the Plaintiff in opposition to the motion diverge significantly on their facts. In *FERRER v CITY OF NEW YORK*, 49 A.D.3d 396, 854 N.Y.S.2d 51, 2008 N.Y. Slip Op. 02474, the Plaintiff’s expert testified from photographs of the scene. Here the expert’s opinion was all speculation. In *COOKE v. CITY OF NEW YORK*, 300 A.D.2d 338, 751 N.Y.S.2d 536, 2002 N.Y. Slip Op. 09149, there was a question of fact raised by a ten day difference between the last snow fall and the accident. Three days between snow fall and an occurrence seems within the definition of reasonableness [*MARTINEZ v. COLUMBIA PRESBYTERIAN MEDICAL CENTER*, 238 A.D.2d 286, 656 N.Y.S.2d 271; *EAMAN v CITY OF NEW YORK*, 294 A.D.2d 144, 742 N.Y.S.2d 35, 2002 N.Y. Slip Op. 03809, (dissent)].

The motion to dismiss the complaint is granted. This constitutes the decision and order of the court.

  
**GEOFFREY D. WRIGHT**  
**AJSC**

Dated: February 28, 2013

**FILED**  
MAR 11 2013  
NEW YORK  
COUNTY CLERK'S OFFICE