

**Feliciano v Interfaith Council for Action, Inc.**

2013 NY Slip Op 33754(U)

January 7, 2013

Sup Ct, Westchester County

Docket Number: 51907/2011

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**FILED AND ENTERED**  
ON 1/8 2013  
**WESTCHESTER COUNTY CLERK**

**SUPREME COURT OF THE STATE OF NEW YORK  
WESTCHESTER COUNTY  
PRESENT: HON. SAM D. WALKER, J.S.C.**

-----X  
GLADYS FELICIANO

Plaintiffs,

-against-

Index No. 51907/2011  
**Decision & Order**

Seq. 1

INTERFAITH COUNCIL FOR ACTION, INC.,  
Defendant.  
-----X

The following papers were read on defendants' motion seeking an order of summary judgment pursuant to CPLR §3212:

**PAPERS**

**NUMBERED**

Notice of Motion/Affidavit/Exhibits A-D; D, A-K

1

This is an action by plaintiff to recover for personal injuries suffered on February 2, 2011 when she slipped and fell at premises located at 273 Spring Street, Ossining New York and owned by defendant interfaith Council for Action. Defendant alleges that the complaint alleging negligence on the part of Interfaith must be dismissed, as on the date of the plaintiff's slip and fall, there was an active storm in progress. An owner or occupant may not be held liable for injuries caused by a storm that was in progress at the time of the accident (*McConologue v. Summer Street Stamford Corp.*, 16 A.D.3d 468 [2<sup>nd</sup> Dept. 2005]) commonly

referred to as the "storm in progress" doctrine. *Boynton v. Eaves*, 66 A.D.3d 1281(3<sup>rd</sup> Dept. 2009); *Zone v. State*, 21 Misc. 3d 183 (Ct. Cl. 2008). Defendant's motion is unopposed.

## **DISCUSSION**

A party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853(1985); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986). In order to defeat defendants prima facie entitlement to judgment as a matter of law, it was incumbent upon the plaintiff, to come forward with evidentiary proof in admissible form, demonstrating the existence of triable issues of fact. *Franks v. G & H Real Estate Holding Corp.*, 16 A.D.3d 619 (2<sup>nd</sup> Dept., 2005), citing, *Welwood v. Association for Children with Down Syndrome*, 248 A.D.2d 707, 708 (2<sup>nd</sup> Dept., 1998).

An owner or occupant is under no obligation to correct a storm-related ice and snow condition while the storm is still in progress. See, *Coyne v. Talleyrand Partners, L.P.*, 22 A.D.3d 627 (2<sup>nd</sup> Dept 2005); *Dall v. Goldbaum*, 293 A.D.2d 562 (2<sup>nd</sup> Dept 2002); *Kennedy v. C & C New Main St. Corp.*, 269 A.D.2d 499 (2<sup>nd</sup> Dept. 2000) (holding that an owner has no duty to remove snow and ice during an ongoing storm) The "storm in progress" defense relieves building owners like Interfaith Council from being obliged to clear walkways until a reasonable time after the storm has ceased, in order to allow workers a reasonable time to clean walkways. *Grau v. Taxter Park Assocs.*, 283 AD2d 551 , leave denied, 96 NY2d 721 (2<sup>nd</sup> Dept. 2001); *Newsome v. Cservak*, 130 AD2d 637, (2<sup>nd</sup> Dept. 1987). Evidence of a storm in progress presents a prima facie case for dismissal. *Mangieri v. Prime Hospitality*, 251 AD2d 632 ( 2<sup>nd</sup> Dept. 1998). In the instant matter the defendant has offered plaintiff's

deposition transcripts where she testified that at about 10:30 a.m. plaintiff left her apartment at 273 Spring Street planning to walk to the "IFCA program" at 138 Spring Street to pay her rent. As she was exiting the apartment building, plaintiff saw her neighbor outside chopping ice. Plaintiff testified that she took two steps and slipped on the landing of the exterior stairs in front of 273 Spring Street. After she fell, plaintiff stated that she noticed "ice all over the place." Within five minutes of her fall, plaintiff was taken by ambulance to Phelps Memorial Hospital. Hospital and ambulance records confirm that the accident occurred on February 2, 2011. Executive Director of Defendant Interfaith Council, June Jarvis was also deposed and she testified that there was an ongoing storm on the morning of plaintiff's accident and that because "the roads were bad" the opening of defendant's offices was delayed until noon.

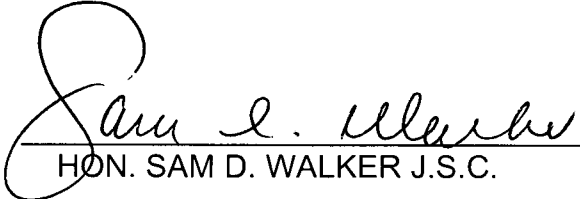
Defendant has also offered in support of its defense a site specific weather analysis report prepared for defendant by the forensic services division of Compuweather. The report prepared is a compilation of available weather data from approved sources for the surrounding area of 273 Spring Street, Ossining New York of the weather conditions that occurred on February 2, 2011. The report concludes that on the date at issue, freezing rain, freezing drizzle, and sleet fell intermittently from midnight on February 1, 2011 until 12 :50 AM February 2, 2011. From 12:50 AM until 10:40 - 10:55 AM on February 2, 2011, there was frequent additional precipitation in the form of freezing rain, freezing drizzle, sleet and occasional rain. The report concludes that approximately .3 to .6 inches of snow and ice accumulation occurred during the course of the day.

Defendant has affirmatively established its defense pursuant to the "storm in progress doctrine". Plaintiff has not opposed the motion, therefore, there is no proffer of evidence or

law to contradict the defendant's evidence that plaintiff's fall occurred during an active storm and during the excluded period of time where property owners have no active duty to clear snow and ice from walkways. Accordingly, the defendant's motion for summary judgment seeking dismissal of the complaint is GRANTED.

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York  
January 7, 2013

  
HON. SAM D. WALKER J.S.C.