

Cipriano v City of New York
2013 NY Slip Op 33808(U)
July 3, 2013
Supreme Court, Richmond County
Docket Number: 104364/11
Judge: Thomas P. Aliotta
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
JANIS CIPRIANO,

Plaintiff,

-against-

**CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW
YORK CITY DEPARTMENT OF SANITATION,
COURTHOUSE MUNICIPAL GARAGE-PARKING
SYSTEMS and PARKING SYSTEMS PLUS, INC.**

Defendants.
-----X

**RICHMOND COUNTY CLERK
2013 JUL 16 P 3 02
PARTITION OF LAW & EQUITY**

Present:

HON. THOMAS P. ALIOTTA

DECISION AND ORDER

Index No. 104364/11

**Motion Nos. 943-001
1671-003**

The following papers numbered 1 to 6 were fully submitted on the 22nd day of May, 2013.

Papers Numbered

Notice of Motion for Summary Judgment by Defendants Courthouse Municipal Garage-Parking Systems and Parking Systems Plus, with Supporting Papers.....	1
Notice of Cross Motion for Summary Judgment by Defendant City of New York, with Supporting Papers.....	2
Plaintiff's Affirmation in Opposition to the Motion and Cross Motion for Summary Judgment.....	3
Affirmation in Partial Opposition to the City's Cross Motion for Summary Judgment by Defendants Courthouse Municipal Garage-Parking Systems and Parking Systems Plus.....	4
Affirmation in Reply and in Further Support of the City's Cross Motion for Summary Judgment.....	5
Reply Affirmation by Defendants Courthouse Municipal Garage-Parking Systems and Parking Systems Plus.....	6

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Upon the foregoing papers, the motion (No. 001) by defendants Courthouse Municipal Garage-Parking Systems and Parking Systems Plus, Inc. (hereinafter, "Courthouse Municipal Parking") for summary judgment and dismissal of the complaint is granted, as is the cross motion (No. 003) for like relief of defendants City of New York, New York City Department of Transportation and New York City Department of Sanitation (hereinafter, the "City").

In this personal injury action, plaintiff alleges that on January 4, 2011 at approximately 8:40 a.m., she slipped and fell on a patch of ice situated on the sidewalk adjacent to the St. George Municipal Parking Lot in Staten Island, N. Y.

In separate motions, co-defendants Courthouse Municipal Parking and the City move for summary judgment on the grounds, *inter alia*, that the cause of plaintiff's fall is based on mere speculation and conjecture. In support, they rely upon plaintiff's testimony at a hearing conducted pursuant to section 50-h of the General Municipal Law, where she stated that although she did not see ice in the specific location of her fall either before or after her accident, she "assumed" that her fall was caused by an icy condition since she observed piles of snow and patches of ice on the sidewalk in the immediate area.

It is well established that "[i]n a slip and fall case, a plaintiff's inability to identify the cause of the fall is fatal to the action because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on

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speculation” (Dennis v Lakhani, 102 AD3d 651, 652, quoting Capasso v Capasso, 84 AD3d 997, 998 [internal quotations marks omitted]).

Here, the moving and cross-moving defendants have established their prima facie entitlement to judgment as a matter of law by submitting a copy of the aforementioned hearing transcript which demonstrates that plaintiff could not identify the cause of her fall without resorting to speculation (*see* Dennis v Lakhani, 102 AD3d at 652; Babitskava v Mosvideofilm Russia, Inc., 98 AD3d 639, 640; Califano v Maple Lanes, 91 AD3d 896, 897). More specifically, according to plaintiff, she did not see the ice patch she slipped on *before* she fell, although she “must have been looking down..trying to maneuver in between the [ice] patches [on the subject sidewalk]”. She further testified that she did not “feel something slippery as [she] fell or right before [she] fell”, nor did she “see an ice patch where she fell *after* [her] fall”. The crux of plaintiff’s testimony was that since there was so much ice in the sidewalk area, she “assumed” that she had slipped on an ice patch (*see* Deputron v A & J Tours, Inc., 106 AD3d 944, 964 NYS2d 670, 671; Alabre v Kings Flatland Car Care Center, Inc., 84 AD3d 1286, 1287).

In opposition, plaintiff has failed to raise a triable issue of fact (*see* Zuckerman v City of New York, 49 NY2d 557, 562; Califano v Maple Lanes, 91 AD3d at 898). “Where [,as here, and in the absence of any evidence to the contrary,] it is just as likely that some other factor, such as a misstep or a loss of balance, could have caused a slip and fall accident, any determination by the trier of fact as to causation would be based upon sheer conjecture” (Dennis v Lakhani, 102 AD3d at 652; *see* Deputron v A & J Tours,

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Inc., 964 NYS2d at 671; Alabre v Kings Flatland Car Care Center, Inc., 84 AD3d at 1287; Rajwan v 109-23 Owners Corp., 82 AD3d 1199, 1201; Manning v 6638 18th Ave. Realty Corp., 28 AD3d 434, 435).

In view of the foregoing, defendants' remaining contentions need not be considered.

Accordingly, it is

ORDERED, that the motion and cross motion for summary judgment are granted, and the complaint is hereby dismissed; and it is further

ORDERED, that the Clerk enter judgment accordingly.

ENTER,

Dated: July 3, 2013



Hon. Thomas P. Aliotta
J.S.C.

GRANTED
JUL 11 2013
Stephen J. Flato