DaCosta v Van Cort Owners, Inc.
2014 NY Slip Op 31646(U)
May 7, 2014
Supreme Court, Bronx County
Docket Number: 301430/09
Judge: Mark Friedlander
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

FILED May 21 2014 Bronx County Clerk

NEW YORK SUPREME COURT-COUNTY OF BRONX
PART IA-25

FREDERICA DACOSTA,

Plaintiff,

-against-

THE VAN CORT OWNERS, INC. and HESPER REALTY ASSOCIATES, INC.,

Defendants.

MEMORANDUM DECISION/ORDER
Index No.: 301430/09

HON. MARK FRIEDLANDER

Defendants, The Van Cort Owners, Inc. ("Van Cort") and Hesper Realty Associates, Inc. (Hesper"), move for an order, pursuant to CPLR§3212, granting defendants summary judgment dismissing plaintiff's complaint on the ground that there are no triable issues of fact as to negligence on the part of the defendants. Defendants' motion is decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained on March 17, 2010, as a result of her slipping and falling on uncleared snow and ice on the sidewalk in front of 180 Van Cortlandt Park South, Bronx, New York ("the Premises"), a building owned by defendant Van Cort, for which Hesper is the managing agent.

In support of the motion, defendants submit a copy of the pleadings, plaintiff's bill of particulars, transcripts of the deposition testimony of plaintiff, and of Martin Tenenbaum (deposed twice), the president of Hesper, a letter from Edward Rios, and certified copies of National Climatic Data Center for Central Park, New York, New York, and La Guardia New York, New York, for the month of

March, 2007.

In opposition to the motion, plaintiff submits her affidavit, a copy of a four paged document labeled "**History for Central Park, NY** Friday March 16, 2008 – View Current Conditions," a "get-well card" from Edward Rios, and plaintiff's supplemental bill of particulars.

Plaintiff's bill of particulars, dated December 21, 2010, and verified by plaintiff on December 29, 2010 (Exhibit "C") and her affidavit (Exhibit "1"), state that, on March 17, 2007, at approximately 7:30 A.M., he slipped and was injured due to approximately five to six inches of snow/ice on the sidewalk in front of the Premises. There was no path shoveled, and or salt or ice spread upon the accumulated snow and ice.

Defendants claim they are not liable for plaintiff's alleged injuries based upon the "storm in progress" doctrine. Under this doctrine, a property owner will not be held liable in negligence for a plaintiff's injuries as a result of a snowy or icy condition occurring during an ongoing storm or for a reasonable time thereafter. *Solazzo v. New York City Trans. Auth.,* 6 N.Y.3d 734 (2005); *Valentine v. City of New York,* 86 A.D.2d 381, 383 (1st Dept. 1982), *aff'd* 57 NY2d 932 (1982). Accordingly, the duty "to take reasonable measures to remedy a dangerous condition caused by a storm is suspended while the storm is in progress, and does not commence until a reasonable time after the storm has ended." *Pippo v. City of New York,* 43 A.D.3d 303 (1st Dept. 2007). Only after "the storm has passed and precipitation has trailed off to such an extent that there is no longer any appreciable accumulation," can an owner or occupant may be held liable for injuries caused by an accumulation of ice or snow. *Powell v. MLG Hillside Assocs., L.P.,* 290 A.D.2d 345 (1st Dept.

2002). Moreover, pursuant to New York City Administrative Code §16-123(a), every owner of a building in New York city, abutting a street with a paved sidewalk, is required to remove snow from the sidewalk within four hours after the snow ceases falling, although the time between 9:00 P.M. and 7:00 A.M. is not included in the four-hour period.

Here, defendants' certified climatological date from National Climatic Data Center for Central Park, New York, New York, and La Guardia New York, New York, for the month of March, 2007, reflect that: (1) for Central Park, on March 16, 2007, from 1:00 A.M., through 3:00 A.M. of March 17, 2007, approximately 5.5" of precipitation fell, in the form of snow, mist, unknown precipitation, rain and freezing rain; and (2) for La Guardia, on March 16, 2007, from 1:00 A.M., through 1:00 A.M. of March 17, 2007, approximately 4.5" of precipitation fell, in the form of snow, mist, ice pellets, rain, drizzle and freezing rain. This climatological data constitutes *prima facie* evidence of the weather conditions before and at the time of plaintiff's accident. *See,* CPLR§4528. "**Weather conditions** Any record of the observation of the weather, taken under the direction of the United States weather bureau is *prima facie* evidence of the facts stated."

Defendants have established their entitlement to summary judgment. *Simeon v. City of New York,* 41 A.D.3d 344 (1st Dept. 2007); *DeStefano v. City of New York*, 41 A.D.3d 528 (2nd Dept. 2007). In opposition to the motion, plaintiff fails to raise a triable issue of fact. The four page document labeled "**History for Central Park, NY** Friday March 16, 2008 – View Current Conditions," is uncertified and thus inadmissible. Further, an excuse, acceptable or otherwise, has not been proffered to explain this evidentiary failure. *Zuckerman v. City of New York,* 49 N.Y.2d 557

562 (1980). Parenthetically, were the Court to consider this document, it shows continuous precipitation for the entire date of March 16, 2007, with the temperatures below freezing from 9:51 A.M. through 11:58 P.M.

Defendants' motion is granted, and plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and order of the Court.

Dated: 5/7/14

MARK FRIEDLANDER, J.S.C.