Lowenstern v Sherman Sq. Realty Corp.
2017 NY Slip Op 32333(U)
October 31, 2017
Supreme Court, New York County
Docket Number: 159528/2014
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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BARBARA A. LOWENSTERN,

Plaintiff,

-against-

SHERMAN SQUARE REALTY CORP., COOPER SQUARE REALTY, INC., and FIRSTSERVICE RESIDENTIAL NEW YORK, INC.,

Defendants.

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DECISION/ORDER

Index No.: 159528/2014

Mot. Seq. 002

HON. CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

This is an action for personal injury. Defendants, Sherman Square Realty Corp., Cooper Square Realty, Inc., and FirstService Residential New York, Inc. (collectively "Defendants"), now move pursuant to CPLR 3212 to dismiss the complaint ("Complaint") of plaintiff Barbara A. Lowenstern ("Plaintiff").

Factual Background

Defendant Sherman Square Realty Corp. owns the property located at 201 West 70th Street, New York, New York (the "premises"). Defendant Cooper Square Realty, Inc., now known as FirstService Residential New York, Inc. manages the premises. The Complaint alleges that on December 26, 2012 at approximately 5:25 p.m., Plaintiff was walking along the sidewalk abutting the premises when she slipped "due to the slippery, dangerous, and unsafe condition of the sidewalk which was covered with a mix of snow, sleet, ice and dirt" (Compl. ¶90). Plaintiff further alleges that Defendants were negligent in that they caused the slippery and dangerous condition by "failing to remove snow, sleet, ice, or dirt from the sidewalk" abutting the premises

(*id.* ¶¶78-80, 93). The Complaint also alleges that Defendants failed to take proper corrective action to remove the snow, sleet, ice and dirt covering the sidewalk and negligently performed snow and ice removal from the premises (*id.* ¶88).

Plaintiff's Testimony

Plaintiff testified that she left work on the date of her accident at approximately 4:30 p.m. and headed home (Stromberg Aff., Ex. J, Lowenstern deposition, 35:6-24). Plaintiff indicated that it was not snowing at the time that she left work (*id.*). Plaintiff further testified that there was snow on the ground when she left work (*id.* 36:16-37:12). Plaintiff testified that the snow on Amsterdam Avenue immediately before the intersection with 70th Street was shoveled to the side (*id.* 2:3-63:10). Plaintiff further testified that as she turned from Amsterdam Avenue to 70th Street, approximately six feet from the corner in from Amsterdam Avenue, she noticed greyish, dirty, slushy snow with feet and track marks throughout (*id.* 49-50). Plaintiff further testified that "a gust of wind caught me from behind, and I skidded and slipped, because I could not get any traction due to some ice hidden underneath the— this grayish, dirty, slushy snow" and lost her balance and fell onto her leg (*id.* 55:7 -56:3). Plaintiff also indicated that she knew she slipped on ice because: "I slid. I was skidded forward, and there was no traction under my feet. I couldn't grip" (*id.* 63:11-64:5). Plaintiff testified that it was not snowing at the time of her accident (*id.* 50:9-11). Plaintiff also testified that on the morning of her accident while on her way to work, she noticed "some little bit of snow" on the ground from snowfall the day before (*id.* 28:16-29:12).

Prendergast's Testimony

Thomas Prendergast ("Prendergast"), the resident manager of the premises, testified that he instructed his staff to salt the sidewalks at the premises at approximately noon on December

26, 2012 (Stromberg Aff., Ex. L, Prendergast Deposition, 49:18-51:12). Prendergast further testified that his staff would customarily salt the subject sidewalk street prior to snow, sleet or slippery weather conditions (*id.*). He testified that there were three maintenance workers, including porters, on duty on December 26 who would perform snow removal operations (*id.* 39:15-40:7). When asked why the salt was applied at noon, Prendergast stated that it was done prior to a forecasted storm (*id.* 49:18-51:12), and that that the weather forecast for December 26 did not indicate that the temperature that day would result in the melted snow freezing to ice (*id.* 53:15-25). Prendergast further testified that there was a wet, slushy snowfall that started around 3 p.m., but did not know when it ended (*id.* 47:17-19). He further testified that if there were any snow on the subject sidewalk, it would have been cleared before noon on December 26 (*id.* 48:2-8). Prendergast also testified that he and his staff did not check the subject sidewalk from the time it was salted until after Plaintiff's accident (*see id.* 57:5-58:2).

Orellana's Testimony

Francisco Orellana ("Orellana"), a non-party witness, testified that he is a property manager for an unrelated real estate company (Stromberg Aff., Ex. N, Orellana Deposition, 29:4-13). Orellana testified that at the time of Plaintiff's accident he was across the street in the lobby of a neighboring building (*see id.* 11:3-8). He further testified that at the time, the weather conditions were: "snowing, raining and hailing, a storm" (*id.* 12:13-14). He explained that the sidewalks were "slippery," and it was "snowing heavily" (*id.* 18:2). There was also "sleet" and it was "very windy" and "cold" (*id.* 18:12-15). Orellana testified that he would not have pre-salted the sidewalk prior to a snow storm, since: "[w]hen you presalt a sidewalk, the snow becomes watery. It washes away the salt, and then you still will have this slippery condition on the

sidewalk, which I try to avoid. (*id.* 29:4-13). He further testified that he would have expected his staff to continue to maintain the sidewalk after salting (*id.* 33:12-23).

Defendants' Motion for Summary Judgment

In support of their motion for summary judgment, Defendants first argue that Plaintiff's accident occurred in the midst of a storm in progress, relieving Defendants of any responsibility to shovel or clear the sidewalk adjacent to the premises. Specifically, Defendants submitted the Certified Climatological Records which indicate that there was a mixture of snow, rain, fog, mist, and "unknown precipitation" at the time of Plaintiff's accident. Defendants argue that the Climatological Records establish that the winter storm began on the afternoon of Plaintiff's accident and continued until the following morning. Defendants also contend that the deposition testimony of Prendergast and Orellana establishes that there was an ongoing winter storm at the time of Plaintiff's accident. Defendants further argue that video footage of Plaintiff's accident demonstrates that a snowstorm was underway.

Defendants also argue that the affidavit of George Wright ("Wright"), a Certified Consulting Meteorologist (Wright Affidavit ¶3), demonstrates that a winter storm took place in the afternoon of Plaintiff's accident and continued through that evening.

Wright also affirms that on December 24, 2012, two days before Plaintiff's accident, snow developed in the evening (*id.* ¶19). The snow mixed with and changed to rain and drizzle by 10:00 p.m. (*id.*) Rain continued to fall overnight through December 25, during which time the temperature was above freezing (*id.* ¶18). Wright further affirms that as a result of rain and above freezing temperatures, the snow completely melted during the overnight hours from December 24 through December 25 (*id.* ¶19). The overnight rain ceased on December 25 at 5:00 a.m. (*id.*). Wright affirms that by December 25 at "7:00 a.m. there was no snow or ice present on

the ground from any previous storms" (*id.*). Wright further affirms that the last appreciable snowstorm occurred on November 7-8, 2012 when 4.7 inches of snow and sleet fell (*id.* ¶26a).

Wright indicates that on December 26, snow began to develop at the premises between 2:00 p.m. and 2:15 p.m. and continued to fall through the time of Plaintiff's accident (*id.* ¶20). Wright further stated that on December 26 at 1:10 p.m., the National Weather Service ("NWS") indicated that "[a] Nor'easter will impact the area this afternoon through Thursday" and that there was Winter Weather Advisory in effect in New York City with 1 to 3 inches of snow expected (*id.* ¶20). A NWS weather forecast issued for Manhattan at 9:32 a.m., 12:06 p.m. and 3:29 p.m. on December 26 indicated that a Winter Weather Advisory was in effect until 6:00 p.m. and a High Wind Warning was in effect from 4:00 p.m. (*id.* ¶22). Wright further affirms that the NWS reported that four-tenths of an inch of snow and sleet fell through 6:00 p.m. (*id.* ¶26d).

Wright states that at the time of Plaintiff's accident, "snow was falling, the temperature was 32 (degrees)" and that as a result of the on-going storm, there was "a slippery coating of snow, slush and ice present on the ground and [subject] sidewalk" (*id.* ¶26c).

Wright further states Defendants' application of salt in preparation for the storm was reasonable. Wright affirms that on December 26 at 12:00 p.m. until Plaintiff's accident the temperature ranged from at or slightly above freezing (32-34 degrees), "and at these temperatures, the salt would have been effective at preventing any water from freezing or refreezing" (*id.* ¶26k).

Further, Defendants argue that the Wright affidavit establishes that there was no ice on the subject sidewalk at the time Defendants applied the salt. Next, Defendants argue that they did not have notice of the alleged dangerous condition. Specifically, Plaintiff did not provide

Defendants with actual notice of the alleged defective condition. Further, Defendants argue that their awareness of inclement weather may lead to a slippery sidewalk is insufficient to establish constructive notice.

Moreover, Defendants argue that the slippery condition of the sidewalk was an open and obvious condition, since Plaintiff admitted that she saw slushy snow on the ground where her accident occurred prior to falling. Additionally, Defendants argue that the video footage of Plaintiff's accident demonstrates that she was running on the sidewalk prior to her accident. Finally, Defendants argue that Plaintiff's claim that she slipped on ice is speculative, since Plaintiff admits in her deposition that she never saw any ice on the ground where her accident took place.

Plaintiff's Opposition

In opposition, Plaintiff argues that the storm in progress doctrine is inapplicable. First, the storm in progress doctrine fails to address the issue of whether the Defendants' pre-salting of the subject sidewalk and their failure to monitor the subject sidewalk thereafter increased the danger posed by the snowfall that day. Moreover, Plaintiff argues that the doctrine fails to address the issue of whether Defendants' application of salt caused snow already on the subject sidewalk to melt and freeze into ice.

Plaintiff also argues that a triable issue of fact exists as to whether Defendants could have cleared the snow fall is raised by Defendants' clearing of the sidewalk on Amsterdam Avenue, directly adjacent to the subject sidewalk, but failing to clear the snow on the subject sidewalk. Plaintiff further argues that the climatological records demonstrate that it snowed .19 inches on December 25th. The records further demonstrate that the temperature from December 25 through the time of Plaintiff's fall varied between above and below temperatures. Plaintiff further argues

that the video footage demonstrates that the snow on the ground at the time of Plaintiff's accident appears to be more than the amount of snowfall on December 26. Plaintiff also argues that Orellana's deposition testimony establishes that applying salt to the sidewalk before snowfall causes the snow to become watery and washing away the salt, resulting in a slippery surface.

Plaintiff further argues that the Wright affidavit failed to consider the testimony of Orellana. Plaintiff also argues that the Wright affidavit also failed to address Plaintiff's testimony that immediately prior to Plaintiff's accident she noticed that the side of the premises facing Amsterdam Avenue was cleared of previous snowfall. Moreover, Plaintiff argues that the Wright affidavit failed to consider the video footage depicting the snowfall on December 26 and a man sliding on the snow a few minutes before Plaintiff's accident.

Plaintiff further argues that the storm in progress doctrine is inapplicable, as there was only a trace amount of precipitation at the time of Plaintiff's accident. Specifically, Plaintiff contends that the climatology records show that on December 26, prior to Plaintiff's accident, that there was a only trace amount of precipitation—a total accumulation of .09 inches of snow. Further, the surveillance video submitted by Defendants shows that there is no snow falling at the time of Plaintiff's accident. Moreover, Plaintiff testified that there was minimal precipitation with gusting winds and wind-blown snow at the time of her accident.

Next, Plaintiff argues that there is an issue of fact as to whether it was feasible for Defendants to treat the sidewalk prior to Plaintiff's accident, since Defendants treated the subject sidewalk immediately after Plaintiff's accident. Further, Plaintiff argues that Defendants had notice of the slippery condition of the sidewalk since Defendants failed to inspect the subject sidewalk from the time the salt was applied until after Plaintiff's accident. Moreover, Plaintiff argues that the slippery condition that caused her fall was not open and obvious, as Plaintiff

testified she was unable to see the ice since it was covered by snow. Plaintiff further testified that she knows there was ice underneath the snow since a gust of wind from behind her caused her to slip on the covered ice. Plaintiff additionally argues that whether the condition was open and obvious is irrelevant, since Plaintiff has not stated a claim for Defendants failure to warn Plaintiff of the dangerous condition.

Defendants' Reply

In reply, Defendants first argue that there was no snow present on the subject sidewalk at the time that it was salted on December 26. Additionally, Defendants contend that Plaintiff's testimony that there was no storm in progress at the time of her accident fails to create an issue of fact. Further, even if there was no snowfall at the time of Plaintiff's accident, an insufficient amount of time elapsed from the cessation of the storm to require Defendants to undertake snow removal activities. Further, Defendants argue that pursuant to New York City Administrative Code, Title 16, Defendants had up to four hours after the conclusion of the snowstorm to begin snow removal. Further, Defendants argue that there are several possible causes of Plaintiff's accident, since Plaintiff may have slipped on slush caused by the on-going snowstorm. Moreover, Defendants contend that Plaintiff was solely responsible for her accident, since she admits that she was seventy-five pounds at the time of her accident and that she was propelled by a gust of wind before she fell.

Defendants' also submit the Wright affidavit in reply to Plaintiff's opposition. With respect to Orellana's testimony that he would not pre-salt the sidewalk, Wright affirms that the salt applied on December 26 at noon would have melted the snow and ice creating salt or "brine" solution on the subject sidewalk. Wright states that "brine" solution would not freeze at temperatures ranging from 32 to 34 degrees and would melt the snow without forming new ice.

Wright additionally indicates that the video footage indicating that the amount of snow on the subject sidewalk is consistent with the amount of snowfall recorded on December 26.

Discussion

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Madeline D'Anthony Enterprises, Inc. v Sokolowsky*, 101 A.D.3d 606, 607, 957 N.Y.S.2d 88, 91 [1st Dept 2012], quoting *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986] and *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]).

The burden then shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (CPLR 3212[b]; *Sokolowsky*, 101 A.D.3d 606). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord and Swift v. Steward M Muller Constr. Co.*, 46 N.Y.2d 276, 281-82 [1978]; *Carroll v. Radoniqi*, 105 A.D.3d 493 [1st Dept 2013]). The Court views the evidence in the light most favorable to the non-moving party, and gives the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v. Stop & Shop, Inc.*, 65 N.Y.2d 625, 626, 491 N.Y.S.2d 151, 480 N.E.2d 740 [1985]). If there is any doubt as to the existence of a triable issue, summary judgment should be denied (*see Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 [1978]).

Storm in Progress

"[I]t is settled that the duty of a landowner 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 N.Y.*, 43 AD3d

303, 304 [1st Dept 2007]; *see Solazzo v. N.Y.C. Tr. Auth.*, 6 N.Y.3d 73, [2005]; *Simeon v. City of N.Y.*, 41 AD3d 344, 344 [1st Dept 2007]). The rule is designed to relieve workers of any obligation to shovel snow while continuing precipitation renders the effort fruitless (*Powell v. MLG Hillside Assoc, L.P.*, 290 A.D.2d 345, 345 [1st Dept 2002]). Where a defendant establishes such a circumstance, it has no duty to remedy the storm-related snow and ice conditions alleged to have caused the plaintiff's injuries (*see Levene v. No. 2 W. 67th St., Inc.*, 126 A.D.3d 541, 542 [1st Dept 2015] [defendants established entitlement to summary judgment because meteorologist affidavit and certified weather records established storm in progress]). However, "[u]pon a defendant's showing that the doctrine applies, the plaintiff may defeat summary judgment by raising a triable issue of fact as to whether the landowner had undertaken snow removal activities that created or exacerbated a hazardous condition" (*see Baumann v. Dawn Liquors, Inc.*, 148 A.D.3d 535, 537 [1st Dept 2017]; *see Pipero v. New York City Tr. Auth.*, 69 A.D.3d 493 [1st Dept 2010]).

Here, Defendants make a *prima facie* showing that there was a storm in progress by introducing the Certified Meteorological Records, Wright affidavit, and deposition testimony of Prendergast and Orellana, which demonstrate that a snow storm was in progress at the time of Plaintiff's accident.

Accordingly, the burden shifts to Plaintiff to raise a triable issue of fact as to whether Defendants created or exacerbated a dangerous condition, or Defendants' actual or constructive notice thereof (*Burniston v Ranric Enterprises Corp.*, 134 AD3d 973, 974 [2d Dept 2015]; *Nadel v. Cucinella*, 299 A.D.2d 250, 251 [1st Dept 2002]; *Sanders v City of N.Y.*, 17 A.D.3d 169 [1st Dept 2005] [liability can be imposed only upon evidence that attempts at snow removal rendered the sidewalk more hazardous]).

Here, Plaintiff's deposition testimony directly conflicts with Defendants' evidence that a snowstorm was in progress, thus raising an issue of fact as to the applicability of the storm in progress doctrine. Plaintiff testified that on the day of her accident it was not snowing at 4:30 p.m. or at the time of her accident (*see Mosley v. Gen. Chauncey M. Hooper Towers Hous. Dev. Fund Co.*, 48 A.D.3d 379, 380 [1st Dept 2008], citing *Howard v. J.A.J. Realty Enters.*, 283 A.D.2d 854, 855–56 [3d Dept 2001] [defendant's motion for summary judgment pursuant to the storm in progress doctrine precluded by conflict between plaintiff's deposition testimony that it was snowing and affidavit of meteorological expert that it was not]).

Moreover, Plaintiff raises an issue of fact as to whether Defendants' salting of the subject sidewalk caused snow from the snow fall of that day to melt and freeze and Defendants failure to check on the sidewalk after salting created or exacerbated the hazardous condition (*see id.*). Plaintiff testified that the ice that caused her to fall was covered with grayish, slushy snow on the ground. She further testified that that she was able to identify ice as the cause of her fall: "I slid. I was skidded forward, and there was no traction under my feet. I couldn't grip [the ground]" (Lowenstern deposition, 63:11-64:5). Prendergast testified that he directed his employees to put salt in the area where Plaintiff's fall occurred prior to the snowstorm, but did not check the condition of the subject sidewalk until after Plaintiff's accident. Wright affirmed that snowfall began at approximately 2:00 to 2:15 p.m. and continued through the time of Plaintiff's accident. Wright further affirmed that the air temperatures in the vicinity of the accident from the time of the salting through Plaintiff's accident remained at and just above freezing (32-34 degrees). Wright also concedes that ice existed on the subject sidewalk at the time of Plaintiff's fall (Wright Aff. ¶26c; Wright Aff. in Reply ¶11). Moreover, the video evidence shows that, a little less than two minutes before Plaintiff fell, another person, apparently bracing against a gust of

wind, slid several feet through slush. This evidence supports Plaintiff's argument that ice could have formed as a result of Defendants' placement of the salt and failure to inspect the subject sidewalk afterword. Accordingly, Plaintiff raised an issue of fact as to whether Defendants were negligent in doing so by causing the snow to melt and freeze which caused or exacerbated the dangerous icy condition (*see Pipero,* 69 A.D.3d 493; *Bauman*, 148 A.D.3d 535).

Therefore, Defendants' motion for summary dismissal of Plaintiff's claim that Defendants' application of salt prior to snowstorm and Defendants' failure to subsequently inspect the sidewalk caused a dangerous condition is denied.

Ice Existing from a Prior Snowfall

For purposes of constructive notice, evidence that it had snowed prior to plaintiff's accident is, by itself, insufficient to establish constructive notice of a dangerous ice condition's existence (*Simmons v. Metropolitan Life Insurance Company*, 84 N.Y.2d 972, 973–74 [1994] ["The testimony that it had snowed a week prior to the accident was insufficient to establish notice because no evidence was introduced that the ice upon which plaintiff allegedly fell was a result of that particular snow accumulation"]). The mere presence of ice does not establish negligence on the part of the entity responsible for maintaining the property (*Lenti v Initial Cleaning Services, Inc.*, 52 A.D.3d 288, 288 [1st Dept 2008]). Rather, there must be evidence that the ice on which he slipped was present on the sidewalk for a long enough period of time before the accident that the party responsible for the sidewalk would have had time to discover and remedy the dangerous condition (*Lenti*, 52 A.D.3d at 288, citing *Simmons*, 84 N.Y.2d 972). Speculation regarding an ice patch's origin will not suffice (*Lenti*, 52 A.D.3d at 288; *see also Rodriguez v. City of N.Y.*, 49 Misc. 3d 1211(A) [Sup. Ct. Bronx County 2015] ["a plaintiff seeking to establish constructive notice of an icy condition . . . must establish the origins of such

condition"]; *compare Massey v. Newburgh W. Realty, Inc.*, 84 A.D.3d 564, 568 [1st Dept 2011] [plaintiff's description of the ice, photo, and climatological data showing freezing temperatures could lead to an inference that the old accumulation of ice was attributable to a prior storm]).

As to the issue of whether Defendants' salting of the subject sidewalk caused existing snow to melt and freeze, the Wright affidavit and certified climatological records are *prima facie* evidence that on December 26 there was no snow on the ground from any previous snow storm. Specifically, Wright affirmed that on December 24, it snowed only a "trace" amount. He further affirmed that the December 24 snowfall completely melted during the overnight hours from December 24 through December 25 because of rain and above freezing temperatures. Wright further affirmed that the rain ended on December 25 at 5:00 a.m. and that the temperature on December 25 reached 41 degrees in the afternoon (*see Massey*, 84 A.D.3d at 570 ["By establishing the absence of any ice at this location for at least two days prior to plaintiff's fall, defendant not only controverts the existence of any ice, but as relevant here, negates actual and constructive notice and thus establishes prima facie entitlement to summary judgment"]).

In response, Plaintiff fails to demonstrate an issue of triable fact. Plaintiff's testimony that she believed she slipped on a slippery surface does not support her argument that the icy condition that caused her fall was created by a previous storm, especially in the face of Wright's statement that there was no ice present on the subject sidewalk from any prior snowstorm and that the alleged icy condition was caused by the December 26 snowstorm. Plaintiff cannot establish, based solely on her own speculation, that the snow and ice condition was caused by the trace snowfall two days prior (*see i.e. Simmons*, 84 N.Y.2d 972 [1994]). Further, Plaintiff fails to submit any evidence to rebut Wright's affidavit and the climatology records that the snow from December 24 was completely melted from the subject sidewalk well before December 26.

Additionally, Plaintiff's testimony that she saw snow on the ground the morning of her accident is not probative, since she does not indicate that she saw snow on the sidewalk where her accident took place. Moreover, Plaintiff's counsel's assertion that the video footage appears to show more snow on the ground than what was forecasted is purely speculative.

Additionally, Plaintiff's contention that the climatological data submitted by Plaintiff demonstrates that on December 25, 2012 there was precipitation including snow and rain totaling 0.19 inches is unsupported by the evidence. Specifically, the Quality Controlled Local Climatological Data and Local Climatological Data for December 25, 2012 indicates that there was no appreciable snowfall (Sallay Aff., Ex. A,, Certified Climatological Record, 34; 51).

Accordingly, Defendants' motion for summary dismissal of Plaintiff's claims related to precipitation prior to the date of the accident is granted.

Open and Obvious

Defendant failed to establish that the subject ice condition was open and obvious and not inherently dangerous. Here, Plaintiff testified that the ice was hidden beneath the grey, slushy snow. Moreover, Plaintiff argues that her negligence claims primarily based on the alleged failure to maintain the premises in a safe condition, not on a failure to warn (*Garcia v. Mack-Cali Realty Corp.*, 52 A.D.3d 420, 421 [1st Dept 2008]). In any event, the mere fact that the ice condition was open and obvious would not preclude a finding of liability, but rather would raise an issue of fact regarding comparative negligence (*see id.*; *Baines v. G & D Ventures, Inc.*, 64 A.D.3d 528 [2d Dept 2009]).

CONCLUSION

Accordingly, it is hereby,

ORDERED that the motion of Defendants, Sherman Square Realty Corp., Cooper Square Realty, Inc., and FirstService Residential New York, Inc. for summary judgment is

granted only to the extent that all claims relating to precipitation before the day of the accident are severed and dismissed; and it is further

ORDERED that Defendants shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: October 31, 2017

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.