

<b>Beck v Hewlett-E. Rockaway Jewish Community Ctr.</b>
2017 NY Slip Op 33465(U)
February 24, 2017
Supreme Court, Nassau County
Docket Number: Index No. 605366/14
Judge: Robert A. Bruno
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

-----X  
JASON BECK,

Plaintiff,

-against-

HEWLETT-EAST ROCKAWAY JEWISH COMMUNITY  
CENTRE and DEAR & DELICIOUS, INC.,

Defendants.

-----X  
HEWLETT-EAST ROCKAWAY JEWISH COMMUNITY  
CENTRE,

Third-Party Plaintiff,

-against-

KAY CATERING LLC, d/b/a CATERING BY INNOVATION,

Third-Party Defendant.

-----X  
HEWLETT-EAST ROCKAWAY JEWISH COMMUNITY  
CENTRE,

Second Third-Party Plaintiff,

-against-

DEAR & DELICIOUS,

Second Third-Party Defendant.  
-----X

TRIAL/IAS PART 14

Index No.: 605366/14

Submission Date: 02/07/17

Motion Sequence: 004

DECISION & ORDER

Beck v. Hewlett-East Rockaway Jewish Community Centre  
Index No.: 605366-14

**Papers Numbered**

<i>Sequence #004</i>	
Notice of Motion, Affirmation & Exhibits .....	1
Affirmation in Opposition & Exhibits .....	2
Reply Affirmation .....	3

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendant Hewlett-East Rockaway Jewish Community Centre (“Centre”) moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint as against it. Plaintiff opposes the motion.

This action was commenced by the electronic filing of a summons and verified complaint on October 13, 2014. The verified complaint alleges that on January 21, 2014, plaintiff slipped and fell at the Centre due to an icy, slippery substance on the ground. Defendant Centre interposed a verified answer with cross claims against defendant Dear & Delicious, Inc. (“D&D”). Defendant Centre also commenced a third-party action seeking indemnification and contribution from Kay Catering LLC d/b/a Catering by Innovation (“Kay”). Upon Kay’s failure to answer the third-party complaint, this Court granted defendant Centre’s unopposed motion (Mot. Seq. #003) for a default judgment against Kay. Defendant Centre also commenced a second third-party action for indemnification and contribution against D&D. D&D answered the second third-party complaint.

On November 29, 2016, the matter was certified as ready for trial. The certification order provided that motions for summary judgment must be filed within 60 days of the filing of the note of issue. The note of issue was filed on November 29, 2016. Defendant Centre’s motion for summary judgment is timely.

Plaintiff’s bill of particulars states that the subject accident occurred on January 21, 2014, at approximately 8:30 P.M., when he was traversing the steps of the Centre and was caused to slip and fall due to an icy, slippery substance on the ground. At his deposition, plaintiff testified that it had been snowing that day and there was snow covering the ground, but he claimed that it was not snowing at the time of his fall (Plaintiff EBT p. 30).

Beck v. Hewlett-East Rockaway Jewish Community Centre  
Index No.: 605366-14

In support of its motion for summary judgment, defendant Centre offers the affidavit of Helaine Ronen, the Centre's administrator, who states that on January 21, 2014, the Centre closed at 3:00 P.M. and all evening activities were cancelled due to the severity of the snow storm which was predicted. When she left the Centre at 3:00 P.M. that day, there were already four inches of snow on the ground. Defendant Centre also submits a bill from Legacy Landscaping, Inc., which provided snow plowing services to the Centre and billed the Centre for plowing ten inches of snow on January 22, 2014. In addition, defendant Centre submits the National Climatic Data Center's certified record of the hourly weather observations at Kennedy Airport on January 21, 2014 and January 22, 2014, which indicate that there was a snowstorm in progress from 8:30 A.M. on January 21, 2014 until nearly 3:00 A.M. on January 22, 2014, with an accumulation of seven inches of snow/ice on the ground. The temperatures during that time period were below freezing.

Pursuant to the "storm in progress" rule, a property owner is not responsible for accidents which occur as a result of the accumulation of snow or ice at the premises until an adequate period of time has passed following the cessation of the storm to allow the owner an opportunity to ameliorate the hazards caused by the storm (*Baolin Liu v Westchester Prop. Mgt. Group, Inc.*, 145 AD3d 942 [2d Dept 2016]; *Dumela-Felix v FGP W. St., LLC*, 135 AD3d 809 [2d Dept 2016]).

Defendant Centre has established, prima facie, that the condition which purportedly caused plaintiff to slip and fall was created by a storm that was in progress at the time of plaintiff's alleged accident. In opposition to defendant Centre's motion for summary judgment, plaintiff's counsel asserts that plaintiff slipped on ice that existed before the storm began. Plaintiff's counsel posits that since there were nearly eight inches of snow on January 2, 2014 and January 3, 2014, it is "very likely" that this snow melted, refroze and melted again developing ice on the subject steps when plaintiff fell on January 21, 2014. Plaintiff offers no evidentiary basis for this supposition. While James Reynolds, the head of maintenance at the Centre, testified at his deposition that shoveling the entrance where plaintiff fell was not a priority because those doors were only used as an exit on the High Holidays and that there have been times where snow has been left to melt if there were "huge, huge, amounts of snow," he also testified that they would usually clear a path because it is an emergency door (Reynolds EBT p. 47). Plaintiff's conjecture that the ice he allegedly fell on remained from previous storms is unsupported by this or any other deposition testimony or climate evidence submitted on this motion. Such speculation fails to create a triable issue of fact sufficient to defeat defendant Centre's motion for summary judgment (*Aronov v St. Vincent's Hous. Dev. Fund Co., Inc.*, 145 AD3d 648 [2d Dept 2016]; *Krichevskaya v City of New York*, 30 AD3d 471 [2d Dept 2006]).

Beck v. Hewlett-East Rockaway Jewish Community Centre  
Index No.: 605366-14

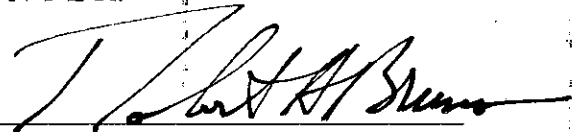
Accordingly, defendant Centre's motion for summary judgment is granted and plaintiff's verified complaint is dismissed as against it.

All matters not decided herein are denied.

This constitutes the Decision and Order of this Court.

Dated: February 24, 2017  
Mineola, New York

ENTER:



Hon. Robert A. Bruno, J.S.C.

**ENTERED**

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