Rosario v New York City Hous. Auth.
2018 NY Slip Op 30885(U)
April 6, 2016
Supreme Court, Bronx County
Docket Number: 302699/2015
Judge: Llinet M. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 25

TOMASA ROSARIO,
Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,
Defendant.

INDEX NUMBER:302699/2015

Present:
HON. **LLINÉT M. ROSADO**

Defendant NEW YORK CITY HOUSING AUTHORITY (hereinafter "NYCHA")moves this Court for an order pursuant to CPLR 3212 dismissing the plaintiff's complaint. Plaintiff opposes the motion and NYCHA submitted a reply.

The within action arises out of injuries sustained by the plaintiff on March 5, 2015 when she slipped and fell on snow and ice on the walkway abutting the NYCHA building located at 1173 East 229th Drive North, Bronx, NY.

NYCHA seeks summary judgment dismissing the complaint as against it, arguing that, as a matter of law, NYCHA is not liable to the plaintiff. Specifically, NYCHA argues that there was storm in progress at the time of plaintiff's alleged incident absolving it of liability. In support of the motion, NYCHA submits a copy of the notice of claim; a copy of plaintiff's 50-h statutory hearing transcript; a copy of the summons and verified complaint; NYCHA's verified answer; demand for a verified bill of particulars and combined demands; plaintiff's verified bill of particulars; a copy of plaintiff's deposition transcript; NYCHA Supervisor of Grounds, Mr. Dennis Norford's deposition testimony; portions of the Snow Removal Sanding Log; the Supervisor of Grounds Log Book; copies of the Note of Issue and Certificate of Readiness; a copy of the May 11, 2017 Order extending NYCHA's time to move for summary judgment; certified local climatological data records for Central Park and La Guardia Airport; an affidavit of meteorologist George Wright; and a copy of plaintiff's expert witness notice.

Plaintiff opposes that motion and argues that the defendant failed to meet its prima facie burden of proof to show that the ice patch that plaintiff fell on did not pre-exist the storm in progress;

that the defendant did not create the hazardous condition at issue; and the defendant did not have notice of, and sufficient time to remedy, the ice patch. In support of her opposition, plaintiff submits plaintiff's 50-h hearing and deposition transcripts; the deposition transcript of NYCHA Supervisor Dennis Norford; photographs of the accident site; March 2015 NOAA Local Climatological Data Reports; an affidavit of Robert B. Cox and a Certificate of Conformity.

In reply, NYCHA argues that plaintiff has failed to offer any evidence sufficient to rebut defendant's prima facie showing that the ice where plaintiff fell was the result of a storm in progress warranting summary judgment in its favor.

On motions for summary judgment, the court's function is issue finding rather than issue determination. see *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 (1957); *Rose v DaEcib USA*, 259 AD2d 258, 686 NYS 2d 19 (1st Dept, 1999). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. see *Rotuba Extruders v Ceppos*, 46 NY 2d 223 (1978); *Sillman v Twentieth Century Fox Film Corp, supra*. The proponent of a motion for summary judgment has the initial burden of the production of sufficient evidence to demonstrate, as a matter of law, the absence of any material issue of fact. see *Alvarez v Prospect Hospital*, 68 NY 2d 320. Once the initial burden has been satisfied, the burden then shifts to the party opposing the motion to produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. see *Zuckerman v City of New York*, 49 NY 2d 557.

The Court finds on this record that NYCHA failed to establish a prima facie showing of entitlement to judgment as a matter of law. see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 (1985). Triable issues of fact exists as to whether defendant had constructive notice of the ice condition and a reasonable opportunity to remedy it even if it did not create it. see *Gonzalez v American Oil Co.*, 42 AD3d 253, 836 NYS2d 611 (1st Dept 2007). Additionally, accumulation levels and/or records of snowfall taken at Central Park and LaGuardia Airport are not necessarily probative of conditions at the site of plaintiff's accident. see *Ralat v New York City Housing Authority*, 265 AD2d 185 (1st Dept 1999). As such, issues of fact exist precluding summary judgment. see *Rose v. DaEcib USA*, 259 AD2d 258, 686 NYS2d 19 (1st Dept 1999)

Even assuming, *arguendo*, NYCHA established a prima facie entitlement to summary judgment, plaintiff raised an issue of fact as to whether defendant had constructive notice of the

alleged hazard. See *Massey, supra*. The issue of fact as to whether the plaintiff slipped and fell on pre-existing accumulation of ice rather then newly fallen snow warrants a denial of the instant motion. See *Tubens v New York City Housing Authority*, 248 AD 2d 291, 670 NYS2d 468, 1998 NY Slip Op. 02832 (1st Dept 1998).

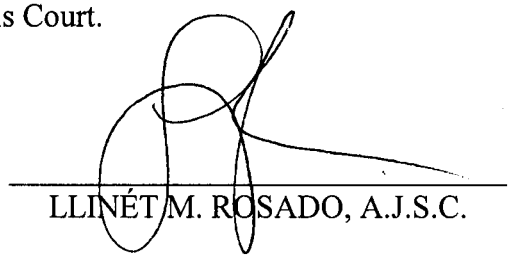
Accordingly, it is

ORDERED, that defendant NYCHA's motion to dismiss pursuant to C.P.L.R. § 3212 and is hereby denied.

Defendant NYCHA shall serve a copy of this Order with Notice of Entry upon plaintiff within thirty (30) days of entry of this Order.

This constitutes the decision and order of this Court.

Dated: April 6, 2016



LLINÉT M. ROSADO, A.J.S.C.

HON. LLINET ROSADO