

**Ramniceanu v Congregation of Refugees Deboey
Misragh Europe**

2018 NY Slip Op 32253(U)

September 11, 2018

Supreme Court, Kings County

Docket Number: 508728/16

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

_____ X

DANIEL RAMNICEANU,

Plaintiff,

-against-

**CONGREGATION OF REFUGEES DEBOEY
MISRAGH EUROPE,**

Defendant.

_____ X

DECISION / ORDER

**Index No. 508728/16
Motion Seq. No. 2
Date Submitted: 7/26/18
Cal No. 43**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendant's motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>19-30</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>32-33</u>
Reply Affirmation and Exhibit Annexed.....	<u>34-36</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

This is a personal injury action arising out of plaintiff Daniel Ramniceanu's slip and fall on the exterior stairs at defendant's synagogue at 1383 President Street, Brooklyn, New York on Saturday, January 23, 2016 at approximately 6:00 p.m..

Defendant contends that it is entitled to summary judgment based upon the "storm in progress" doctrine. Defendant tenders the affidavit of their meterological expert and certified meterological records to demonstrate that it was snowing at the time of plaintiff's accident. Plaintiff opposes the motion and contends that he does not allege that the sole cause of the accident was snow and ice, but that in addition to the

snow and ice, the subject staircase was hazardous, and there were violations of the New York City Building Code that contributed to the accident.¹

Defendant has made a prima facie showing of entitlement to summary judgment by establishing with competent evidence that there was a storm in progress at the time of plaintiff's accident (*see Smith v Christ's First Presbyterian Church of Hempstead*, 93 AD3d 839, 840 [2d Dept 2012] ["Storm in progress" doctrine applied to preclude plaintiff's recovery against church for injuries plaintiff allegedly sustained when she slipped and fell on snow and ice on entrance ramp at church]; *see also Bowen v City Univ. of New York*, 294 AD2d 322, 322 [2d Dept 2002] ["the correct standard to be applied is that which applies to a private landowner, since the ownership and operation of a college campus is a proprietary function"]; *Whitt v St. John's Episcopal Hosp.*, 258 AD2d 648 [2d Dept 1999] ["As a general rule, the owner or proprietor of nonresidential premises may await the end of a snow or ice storm and for a reasonable time thereafter before undertaking protective measures to correct storm-created, hazardous conditions caused by accumulated ice and snow upon its outside walks and steps"]).

In opposition, the plaintiff has failed to raise a triable issue of fact on this point. The LaGuardia weather report indicates that the snow storm started during the night and continued all through the day of plaintiff's accident, not stopping until after his accident. By the time it stopped, 27 inches of snow had fallen. There was no snow on

¹To the extent the opposition papers were late, defendant was able to timely reply and was not prejudiced (*see Bakare v Kakouras*, 110 AD3d 838, 839 [2d Dept 2013] ["Contrary to the defendants' contention, the Supreme Court providently exercised its discretion in accepting the plaintiff's untimely opposition papers, since the defendants were not prejudiced thereby"]; *Mughal v Rajput*, 106 AD3d 886, 887 [2d Dept 2013] ["Although the affidavit was not timely submitted, the plaintiffs had an opportunity to respond to it, and were not prejudiced thereby"]).

the ground before this storm. The JFK report indicates that the snow had pretty much stopped at 4:00 p.m. on January 23, with trace amounts still falling. The Central Park and Newark reports are similar to the one for LaGuardia. Thus, defendant was entitled to a reasonable period of time after the snow stopped falling to clear the snow. Because the property is a synagogue, defendant would reasonably be entitled to wait until sunset plus time for the workers to arrive.

However, the complaint and bill of particulars (Exhibit C to defendant's motion) also allege that the stairs were hazardous "due to improper step geometry; their broken and dilapidated condition; to not have proper and adequate handrails; in violating section 1009.3, and 1009.11.2 of the New York City Building and Construction Code; and in violating section 28.301.1 of the New York City Building and Construction Code, all of which contributed to the accident," which is not contradicted by plaintiff's deposition testimony, as defendant alleges (*see Martinez v 1261 Realty Co., LLC*, 121 AD3d 955, 956 [2d Dept 2014] ["Affording the plaintiff the benefit of every reasonable inference, the plaintiff's deposition testimony does not contradict the allegation in her bill of particulars that the stair's alleged noncompliance with Administrative Code § 27-375 (h) played a causal role in her injuries" (internal citations omitted)]).

While plaintiff's testimony at his examination before trial only identifies "impacted snow" as the cause of his slip and fall (Exhibit E at 25-26) the testimony does not contradict the claim in his bill of particulars that the defective stairs contributed to his fall. Such technical knowledge is "beyond plaintiff's purview" (*see Vosper v Fives 160th, LLC*, 110 AD3d 544, 545 [1st Dept 2013]). While plaintiff does not include an expert's affidavit in his papers in opposition, defendants haven't made a prima facie case that

the stairs were not defective or violative of the New York City Building Code.

The building is an old one, built before 1938 when the building code was enacted. It was converted to a synagogue from a single family house without obtaining a new certificate of occupancy, according to the public New York City Department of Building's website. Thus, defendant's failure to address plaintiff's claim that the stairs were hazardous due to their defective condition prohibits the court from granting defendant summary judgment.

Accordingly, it is

ORDERED that the motion is granted, pursuant to CPLR 3212(g), only to the extent of finding that the storm-in-progress doctrine bars plaintiff from claiming that the defendant's failure to clear snow and ice from the subject stairs was the sole cause of his accident, or that the property owner was required to clear the steps prior to his accident.

This constitutes the decision and order of the court.

Dated: September 11, 2018

ENTER :



Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court