

Ulloa v New York and Presbyt. Hosp.

2019 NY Slip Op 31098(U)

April 11, 2019

Supreme Court, New York County

Docket Number: 159435/2014

Judge: Gerald Lebovits

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. GERALD LEOVITS</u>	PART	IAS MOTION 7EFM
	<i>Justice</i>		
-----X		INDEX NO.	<u>159435/2014</u>
ARIOSTO MOREL ULLOA, ANA ULLOA,		MOTION DATE	<u>11/21/2018</u>
Plaintiffs,		MOTION SEQ. NO.	<u>003</u>

- v -

THE NEW YORK AND PRESBYTERIAN HOSPITAL, CENTRAL
PARKING CORP., STANDARD PARKING CORP. A/K/A SP PLUS
CORP., CENTRAL PARKING SYSTEM OF NY, INC., ROYAL
CHARTERS PROPERTIES, INC.

DECISION AND ORDER

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion for

SUMMARY JUDGMENT

Maggiano, DiGirolamo & Lizzi, P.C. (Michael Lizzi, of counsel), for plaintiffs.
Luca & Pearl, LLP (Scott W. Pearl, of counsel), for defendants.

Gerald Lebovits, J.:

In this slip-and-fall personal injury action brought by Ariosto Morel Ulloa and his mother Ana Ulloa, defendants The New York and Presbyterian Hospital (Presbyterian), Central Parking Corporation (Central), Standard Parking Corporation a/k/a SP Plus Corporation (SP), Central Parking System of New York, Inc. (Central Parking) and Royal Charters Properties, Inc. (Royal) move for summary judgment dismissing the complaint.

BACKGROUND

According to the complaint, plaintiffs were involved in an accident on February 16, 2014 at approximately 3:00 p.m. on the sidewalk in front of a parking garage at 630 West 160th Street in New York County, following a severe snowstorm in the city.

Ariosto resided at 652 West 160th Street for decades, on the same side of the street as the parking garage at 630 West 160th Street. Plaintiffs allege that they slipped and fell on an icy sidewalk in front of the garage after exiting from Ariosto's parked car, resulting in serious injuries to Ariosto and minor injuries to his mother.

Plaintiffs sued defendants for personal injuries due to defendants' alleged negligence in failing to maintain a safe premises at the time of the accident. Plaintiffs contend defendants' conduct also violated § 7-210 of the New York City Administrative Code (Code). Plaintiffs

brought claims against Presbyterian as owner of the property where the accident occurred, against Royal as an entity that shared use of the parking garage with Presbyterian, and against Central, SP, and Central Parking as managers of the property.

Defendants move for summary judgment to dismiss the complaint. They acknowledge that Presbyterian, as the owner of the subject property, is subject to § 7-210 of the Code, but contend that the other defendants are not similarly liable. Defendants argue that despite Presbyterian's statutory obligations to plaintiffs, it is not liable because, due to the highly unusual circumstances that a major snowstorm of this nature provided, Presbyterian did not have a reasonably sufficient time to clear the subject property and avert the accident.

Defendants submit as evidence the deposition testimony of several individuals, both party and nonparty witnesses. These include the following: plaintiff Ariosto Morel Ulloa; plaintiff Ana Ulloa; nonparty witness Chery Vidal; SP and Central's Area Manager Tomasz Cydzik; Presbyterian's Security investigator Jose Garcia; Presbyterian's former Director of Facilities Joseph Castellano; Presbyterian's Maintenance Manager Vincent David; nonparty witness Francis Perez; and former SP Manager Guy Dominique. There are also affidavits from Vincent David, Joseph Castellano and John Demeo, who is the Manager of Construction within Presbyterian's Facilities Department. The remainder of the evidence consists of photographs taken of the subject property after the accident, and weather documents from a number of sources related to the snowstorm that preceded the accident.

According to Ariosto Morel Ulloa, his accident occurred as he was returning to his home and as he was exiting his car, which was parked in the middle of the street in front of the garage. He testified that it was not possible for him or his mother to exit the car in front of his home, due to the huge presence of snow there. He assumed that the area in front of the garage was clear for walking. Before falling, he assumed the sidewalk contained a little snow, but after his fall, he realized that there was ice on the sidewalk.

Tomasz Cydzik testified that he had been working for SP for 23 years and that his company managed the garage that was under Presbyterian ownership. He testified that in February 2014, the garage operated Monday through Friday from 6:00 a.m. to 10:00 p.m., and was closed on the weekends. He further testified that snow removal for the sidewalk in front of the garage was the responsibility of Presbyterian's Facilities Department.

Vincent David, an employee of Presbyterian, testified that, at the time of the accident, his department was responsible for cleaning the space around the garage during snowstorms. The garage was used by hospital employees. He stated that during snowstorms, the hospital was given priority, including the ambulance entrances, while the parking facilities were secondary to the hospital. He testified that snow and ice removal would be done every day and on weekends.

With respect to the specific incident on February 16, 2014 and the days preceding it, David did not recall the exact dates of work being done, but assumed that as long as there was snow, his department would clear the properties. David also submitted an affidavit where he confirms his deposition testimony and contends that snow and ice removal had been undertaken at the location of the garage during and after the snowstorm.

Chery Vidal, a nonparty who was a neighbor of Ariosto, witnessed the accident and took photographs of the area where he fell after he was escorted by ambulance to a hospital. These photographs are among the evidence submitted by defendants and were examined by some of those who were deposed or submitted affidavits on behalf of defendants. Ms. Vidal testified that she saw Ariosto after his fall and that he was sitting on ice in front of the garage. She also testified that she saw the ice on the preceding Friday, two days before the incident, and that it looked exactly the same as in the photographs.

Joseph Castellano, who was in charge of the Facilities Department at Presbyterian at the time of the accident, testified as to work that this department did with respect to snow and ice removal. He affirmed several statements that were made by David, including the allocation of hospital resources during the critical weather event. Castellano's affidavit is included to supplement his deposition testimony.

Defendants submit John Demeo's affidavit, in which he acknowledges that the work orders and records exchanged during discovery, as testified by David, were created and are maintained by the Facilities Department. The orders indicate that the department had undertaken removal efforts at the garage area on February 13, 2014 and on February 15, 2014, and that some employees performed on an overtime basis.

Defendants submit copies of weather records and reports, indicating the gravity of the preceding snowstorm. According to National Oceanic & Atmospheric Administration/ National Weather Service data, on record from 1869 to the present, the storm ranks 27th on the list of the "Biggest Snowstorms" to strike New York City.

Defendants also submit a certified copy of weather data compiled at the official weather observation facility in Central Park for the month of February 2014, which includes daily and hourly observations and summaries. Defendants contend that on Wednesday, February 12, 2014, no precipitation fell. However, the average temperature for the day was 19 degrees, almost 16 degrees below normal, and there was 10 inches of "snow depth," or existing snow on the ground.

Relying on a "Hazardous Travel Advisory" issued by the New York City Office of Emergency Management for February 13th and 14th of 2014, defendants assert that due to the magnitude of the storm, alternate side parking rules were suspended for a 10-day period. On Saturday, February 15, after three days of snow, snow accumulation totaled 14.1 inches. From Saturday night to Sunday morning, the temperature had dropped to below freezing, and on Sunday afternoon, the time of plaintiff's accident, the temperature plus the wind chill was approximately 20 degrees, with wind gusts at almost 30 m.p.h. throughout the day.

Defendants argue that due to the severity of the storm, even in its aftermath, Presbyterian, following its protocol in snow removal procedure, did not have a reasonable opportunity to clear the garage area where the accident occurred and should not be found liable for negligence. Although such a matter is often regarded as a jury issue or an issue of fact, defendants contend that in light of the highly unusual snowstorm, the matter should be determined by the court.

Plaintiff's opposition papers focus on Presbyterian, as the owner of the garage property where the accident occurred. Plaintiffs contend that Presbyterian had an adequate opportunity to clear the subject property of snow and ice, or that this matter should be ultimately determined by a trier of fact.

Plaintiffs submit an affidavit from James Bria III, a certified consulting meteorologist employed by CompuWeather. Bria supplements his affidavit with a report dated June 30, 2015, entitled "Site Specific Weather Analysis Report." In his affidavit and report, Bria outlines in detail the weather conditions prevailing during the period of February 13 to February 16, 2014, based on information from several sources, including the National Weather Service.

Bria states that on Thursday, February 13, 2014, 9.5 inches of snow fell throughout the day. On Friday, February 14, 2014, 3 inches of snow fell. The total snowfall for this period ended at approximately 5:30 am on Friday. Bria states that there was no snow for the rest of Friday and into the early and late morning of Saturday. Beginning almost 30 hours later on Saturday, February 15, 2014, 1.6 inches of snow fell from 11:00 a.m. through 8:00 p.m. There was no precipitation after that time and through the time of the accident, which was at 3:00 p.m. on Sunday, February 16, 2014.

Regarding temperature, Bria reports that the high temperature on Friday, February 14, 2014 was 40 degrees Fahrenheit and the low temperature was near 31 degrees Fahrenheit. On Saturday, the high temperature was 37 degrees Fahrenheit and the low temperature was near 27 degrees Fahrenheit. On Sunday, February 16, 2014, the high temperature was 30 degrees Fahrenheit and the low near 21 degrees Fahrenheit.

Plaintiffs argue that the period of time afforded Presbyterian to take notice of an icy condition and to remove snow and ice at the subject property was reasonable, claiming that Presbyterian had at least 19 hours to perform removal service since February 14, and that its failure to do so constitutes negligence. Alternatively, plaintiffs argue that the negligence is an issue of fact, precluding the granting of summary judgment.

In reply, defendants contend that all the weather documents regarding the snowstorm are consistent as to its severity. Defendants hold that on the day of the accident, the temperature never rose above freezing and remained that way for several more days. While prioritizing its resources, defendants contend that Presbyterian acted in a reasonable manner in its performance and the concerns involving the garage property were secondary to the operation of the hospital. Therefore, under the circumstances, defendants argue that Presbyterian's measures did not result in negligence.

DISCUSSION

"It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues" (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). On a motion for summary judgment, the movant must "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact" (*Richardson v County of Nassau*, 156 AD3d 924, 925 [2d Dept 2017]). Only if the movant succeeds in meeting its burden will the burden shift to the

opponent to demonstrate though legally sufficient evidence that there exists triable issues of fact (*Id.*).

The accident in this case occurred on a Sunday. The evidence reflects that Presbyterian, rather than SP or Central, was responsible for the removal of ice and snow on its properties during weekends.

A landowner's ordinary 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. (*See Weinberger v 52 Duane Assoc. LLC*, 102 AD3d 618, 619 [1st Dept 2005].) It is undisputed that Presbyterian, as owner of property abutting a public sidewalk, had a duty under § 7-210 of the Code to maintain the sidewalk in a safe condition. The issue in this case is thus whether Presbyterian was provided with a reasonable amount of time after the storm had ended before its duty of maintenance was triggered.

Defendants cite several cases in which courts consider various factors in deciding what constitutes a reasonable time to remove ice and snow from one's property, such as actual weather conditions, the duration of the storm, and the range of temperatures during and after the storm. Defendants argue that a major hospital such as Presbyterian must, like a municipality, set reasonable priorities for removing large quantities of snow and ice following a snow. In their opposition, plaintiffs contend that Presbyterian does not have the same level of responsibilities as a municipality and does not own or control the same expanse of property.

Regarding the weather conditions before and after the storm, the evidence in the record indicates an unusually harsh snowstorm. Defendants contend that the low temperatures that lingered long after the cessation of the storm, along with the wind chill, were a major factor in a possible delay in the removal and should be taken under consideration when determining reasonable time.

Plaintiffs cite § 16-123 of the Code, which concerns the property owner's duties in removing snow and ice. That section provides that an owner of property abutting a city sidewalk shall, within four hours after the cessation of snow, remove the snow and ice there, the time between 9:00 p.m. and 7:00 a.m. is not included in that period. Plaintiffs acknowledge that this section is not always strictly construed, but assert that the period of the cessation of this particular storm and the time of the accident was more than sufficient time to for Presbyterian to undertake the removal.

This court concludes that plaintiffs have raised an issue of fact as to whether Presbyterian's failure to remove the ice from the subject property was reasonable under all of the circumstances, including the severity of the storm, the weather conditions afterwards, and the scope of Presbyterian's snow-removal responsibilities.

Accordingly, it is

ORDERED that defendants' motion for summary judgment is granted with respect to all defendants except Presbyterian, and the complaint is dismissed in its entirety against these defendants, with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk enter judgment accordingly in favor of all defendants except Presbyterian; and it is further

ORDERED that the action is severed and continued against Presbyterian.

4/11/2019

DATE

GERALD LEBOVITS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE