

**Minardo v City of New York**

2019 NY Slip Op 33489(U)

November 15, 2019

Supreme Court, New York County

Docket Number: 160203/2017

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

-----X

ANTHONY MINARDO

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 160203/2017
MOTION DATE 11/13/2019
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for JUDGMENT - SUMMARY

This action arises out of personal injuries allegedly sustained by plaintiff on February 10, 2017 at approximately 7:15 a.m. as result of slipping and falling due to alleged snow and/or ice on the crosswalk, on the east side of First Avenue while crossing 66th Street, in the County, City, and State of New York.

The City of New York (City) now moves for summary judgment primarily on the grounds that the City did not have reasonable amount of time to remedy the snow/ice condition following the cessation of storm. Plaintiff opposes the motion on the grounds that the City's attempt to clear the snow and ice was insufficient. For the reasons set forth below, the City's motion for summary judgment is granted and the complaint is dismissed.

Undisputed Facts

On February 9, 2017, the day prior to plaintiff's accident, 9.4 inches of snow fell and there had not been snowfall in the month of February prior to this snow storm. The snow stopped falling at 4 p.m. on February 9, 2017, approximately 15 hours before plaintiff's accident. During the snow fall, temperatures fluctuated to as high as 44 degrees Fahrenheit and to as low

as 19 degrees Fahrenheit. On the date of incident, February 10, 2017, the temperature rose to a high of 32 degrees Fahrenheit and dropped to a low of 19 degrees Fahrenheit.

### **Applicable Law**

It is a well-established principle that the “function of summary judgment is issue finding, not issue determination” (*Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 [NY 1986] and *Winegrad v New York University Medical Center*, 64 NY2d 851 [NY 1985]). Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*Ropog Cab Corp.*, supra).

It is well settled that for the City to be held liable for injuries resulting from a failure to remove snow and ice, a reasonable amount of time must have elapsed to allow the City sufficient time to remedy the condition. *See Valentine v City of New York*, 86 AD2d 381, 383 [1st Dept 1982]; *Fuks v New York City Transit Authority*, 243 AD2d 678 [2d Dept 1997]; *Bi Fang Zhou v 131 Chrystie St. Realty Corp.*, 125 AD3d 429, 430 [1st Dept 2015].

### **Discussion**

The City has established its prima facie entitlement to judgment as a matter of law. The City argues that because only 15 hours had elapsed from the cessation of the storm until plaintiff’s accident, the City’s time to remedy the condition had not yet expired therefore it cannot be held liable for plaintiff’s injuries. In opposition, plaintiff has failed to raise a triable issue of fact. Plaintiff argues that 15 hours is a sufficient amount of time for the City to have

remedied the condition, especially since there is evidence that the Department of Sanitation plowed snow at the accident location. Alternatively, plaintiff argues that the plowing done by the Department of Sanitation caused and created the condition. The Court however finds this argument unavailing.

In *Valentine* the First Department held that 30 hours between the storm's cessation and plaintiff's fall was insufficient as a matter of law to hold the City liable (*Valentine v New York*, 86 AD2d 381, 384 [1st Dept 1982]). While *Valentine* involved a snow and ice condition on the sidewalk, there it had only snowed 3 inches and ceased 30 hours before plaintiff's accident.

Here, 9.4 inches of snow fell *only* 15 hours before plaintiff's accident. The City's time to remedy the snow and ice condition still had not expired, simply because the Department of Sanitation was "ahead of the curve" with its snow removal efforts to the area in question does not automatically accelerate the "reasonable time" the City had following the snow storm to remedy the condition. To hold otherwise would, in effect, negate well established precedent.

The Court is also not convinced by the two other theories proposed by the plaintiff. First, the affidavit provided by the plaintiff in which another person claims to have fallen at the location prior to the plaintiff's fall. The affidavit clearly indicates that the person did not tell anyone about this fall, so it does not establish notice. Secondly, the plaintiff's claim that there was ice underneath the snow is unavailing. As indicated above, there had not been any snowfall prior to the instant snowfall in the days before. Thus, there is no basis for the City being negligent for failing to remedy a prior snow condition. Accordingly, it is hereby

ORDERED that the City's motion is granted and the complaint is dismissed: and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

11/15/2019

DATE

LYLE E. FRANK, J.S.C.

HON. LYLE E. FRANK  
J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE