

Kegerreis v South Huntington Pub. Lib.
2019 NY Slip Op 34826(U)
December 30, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 14-70704
Judge: David T. Reilly
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SHORT FORM ORDER

INDEX No. 14-70704CAL. No. 18-00445OTSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY**PRESENT:**Hon. DAVID T. REILLY
Justice of the Supreme CourtMOTION DATE 8-1-18
ADJ. DATE 10-23-19
Mot. Seq. # 004 - MD-----X
HELEN KEGERREIS,

Plaintiff,

- against -

SOUTH HUNTINGTON PUBLIC LIBRARY,
COUNTY OF SUFFOLK, TOWN OF
HUNTINGTON, TOWN OF SOUTH
HUNTINGTON, HUNTINGTON SCHOOL
DISTRICT,Defendants.
-----XROBERT E. SCHLEIER, JR., ESQ.
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Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers dated July 2, 2018; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers dated October 16, 2019; Replying Affidavits and supporting papers dated October 22, 2019; Other ; ~~(and after hearing counsel in support of and opposed to the motion)~~ it is,

ORDERED that the motion by defendants Huntington School District and South Huntington Public Library for summary judgment dismissing the complaint against them is denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff on December 17, 2013, at approximately 5:30 p.m., when she slipped and fell on ice while walking on the upper parking lot steps of the South Huntington Public Library (Library) located at 145 Pidgeon Hill Road in Huntington Station, New York, which is maintained by the Library. The gravamen of the complaint is that defendants were negligent in failing to properly maintain, manage and control their property, creating a hazardous condition.

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Defendants Huntington School District (District) and the Library now move for summary judgment dismissing the complaint against them on the ground, *inter alia*, that a storm was in progress at the time of the accident, and that they neither created the alleged dangerous condition nor had actual or constructive notice of the condition. In support of the motion, moving defendants submit, among other things, the pleadings, the bill of particulars, the transcripts of the parties' testimony, an affidavit of Arthur Olsen, a representative of the Library, and an affidavit of Alicia Wasula, a meteorologist.

At the General Municipal Law § 50-h hearing, plaintiff testified that on the early afternoon of the accident, after parking her vehicle in the parking lot in front of the subject library, she walked inside the library, and felt the ground condition was "not hazardous." Two to three hours later, as plaintiff exited the library, she did not recall whether there was any precipitation. Noticing the road condition was "icy" and "slippery," plaintiff walked "very slowly" and cautiously, crossed the road, and ascended steps leading to the parking lot. Plaintiff observed the handrail on the steps was covered with ice. Once plaintiff reached the landing at the top of the steps, she took two or three steps, and then her feet slipped, causing her to fall to the ground. Plaintiff testified that prior to her accident, she did not notice whether any areas where she walked had been salted or sanded. She observed that the condition of the flat surface where she fell was "slick."

At her deposition, plaintiff testified that on the day of the accident, she did not recall whether there was any precipitation before she walked into the library. She testified that as she walked out of the library, there was "no precipitation." She testified that she had no recollection as to whether there was ice on the handrail as she walked down the steps from her vehicle into the library, but that there was ice present on the handrail when she left. She further testified that as she left the library and walked up the steps toward her vehicle, she observed ice on the steps, and that once she walked away from the handrail, she fell.

At his deposition, Joseph Lantini testified he is the director of the Library, and was working on the day of the accident. Lantini testified that it snowed a lot earlier that day, that the snow turned to a light rain in the mid to late afternoon, and that "the temperature plummeted and things got icy quick for the last hour" when he was in the library. He testified that light snow fell for most of the day, that it was "becoming progressively more icy" at approximately 4:30 to 4:45 p.m., and that he went outside every couple of hours to observe the weather. Lantini testified that on the following day, he observed a surveillance video where he observed one of the maintenance personnel apply salt to the walkways leading to the steps and directly to the steps at approximately 5:15 p.m. on the day of the accident, prior to plaintiff's fall.

In his affidavit, Arthur Olson states that he is employed by the Library as a custodian. He states that on the day of the accident, he worked from 2:00 p.m. to 6:45 p.m., and that the weather was overcast with rain, snow, and sleet throughout the day until approximately 5:45 p.m. Olson states that he and the other employees continually applied ice melt to pedestrian walkways outside the library and to the stairs leading to the parking lot approximately every half hour from 4:00 p.m. through 6:45 p.m. due to the weather. He states that at approximately 4:00 p.m. it was still raining, and the temperature was dropping rapidly. Olson also states that at approximately 5:15 p.m. he applied ice melt by hand to the subject stairs and the concrete landing where plaintiff allegedly slipped.

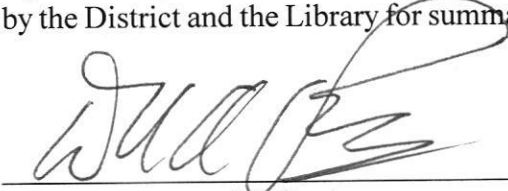
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In her affidavit, Alicia Wasula, a certified meteorologist, concludes that there was an ongoing storm at the subject premises on the day of the accident from 11:30 a.m. through 5:35 p.m. Wasula states that the temperature at approximately 5:30 p.m. was between 28 and 29 degrees, and that light snow was falling. Wasula further states that as a result of the ongoing light precipitation, outside areas which were wet would have been frozen quickly as the air temperature plummeted below freezing during the one to one and a half hours prior to the subject accident.

A real property owner or a party in possession or control of real property will be held liable for injuries sustained in a slip-and-fall accident involving snow and ice on its property only if it created the dangerous condition or had actual or constructive notice of the condition (*see Devlin v Selimaj*, 116 AD3d 730, 986 NYS2d 149 [2d Dept 2014]; *Morreale v Esposito*, 109 AD3d 800, 801, 971 NYS2d 209 [2d Dept 2013]; *Gushin v Whispering Hills Condominium I*, 96 AD3d 721, 721, 946 NYS2d 202 [2d Dept 2012]). A defendant has constructive notice of a hazardous condition on property when the condition is visible and apparent, and has existed for a sufficient length of time to afford the defendant a reasonable opportunity to discover and remedy it (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 501 NYS2d 646 [1986]; *Depczynski v Mermigas*, 149 AD3d 1511, 52 NYS3d 776 [4th Dept 2017]). A person responsible for maintaining property is not under a duty to remove snow and ice until a reasonable time after cessation of the storm (*see Popovits v New York City Housing Auth.*, 115 AD3d 657, 981 NYS2d 562 [2d Dept 2014]; *Marchese v Skenderi*, 51 AD3d 642, 856 NYS2d 680 [2d Dept 2008]; *Dowden v Long Is. R.R.*, 305 AD2d 631, 759 NYS2d 544 [2d Dept 2003]). If a storm is ongoing, and the owner elects to do snow removal while the storm is ongoing, it must do so with due care so as not to exacerbate a natural hazard (*see Yeung v Selfhelp [KIV] Assoc., L.P.*, 170 AD3d 653, 653, 95 NYS3d 312 [2d Dept 2019]; *DeMonte v Chestnut Oaks at Chappaqua*, 134 AD3d 662, 664, 20 NYS3d 591 [2d Dept 2015]; *Anderson v Landmark at Eastview, Inc.*, 129 AD3d 750, 10 NYS3d 605 [2d Dept 2015]).

Here, the District and the Library have failed to establish their prima facie entitlement to judgment as a matter of law. While plaintiff testified that there was no precipitation falling when she walked out of the library, the library's employees testified that rain, snow, and sleet continued throughout the day until 5:45 p.m. Moreover, although Olson, a library employee, testified that he applied ice melt to the subject stairs and the concrete landing, plaintiff testified that there was ice on the stairs, that the condition of the subject area was slick, and that she did not notice whether the area had been salted or sanded. Under these circumstances, there are questions of fact as to whether a storm was in progress at or near the time of the incident, whether the Library employee engaged in snow removal activities with reasonable care, and, that assuming they engaged in snow removal activities while the storm was still in progress, whether the Library created a hazardous condition or exacerbated a natural hazard created by the storm, which caused the plaintiff to fall (*see Yeung v Selfhelp [KIV] Assoc., L.P., supra*). Moving defendants' other claims are considered and are found to be without merit. Thus, the motion by the District and the Library for summary judgment is denied.

Dated: December 30, 2019
Riverhead, NY


 J.S.C.

HON. DAVID T. REILLY

 FINAL DISPOSITION X NON-FINAL DISPOSITION

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