Ramirez v City of New York
2020 NY Slip Op 32044(U)
April 30, 2020
Supreme Court, New York County
Docket Number: 450105/2019
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE L. LOVE** **PART 62**

Justice

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RAMON RAMIREZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, MARCO VINUEZA

Defendant.

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INDEX NO. 450105/2019

MOTION DATE 03/13/2020, 03/13/2020

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 55, 58, 59

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 57

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motions are decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint in Bronx County, dated December 14, 2017, seeking to recover for personal injuries allegedly sustained by the plaintiff, Ramon Ramirez as the result of a slip and fall incident on January 31, 2017, at approximately 12:15 p.m., on the public sidewalk in front of 95 Marble Hill Avenue, Bronx, New York. Defendant, the City of New York filed an answer, dated January 2, 2018 and defendant, Marco Vinueza, filed an answer and demand for a change of venue, dated January 24, 2018. In a stipulation, so-ordered on January 22, 2019, this action was transferred to New York County. Defendant, Marco Vinueza now moves for summary judgment on the basis that he had no duty to remove snow and ice from the sidewalk due to a storm in progress and the City of New York moves for summary judgment on the basis that it had no duty to remove snow and ice

from the sidewalk pursuant to section 7-210 of the Administrative Code of the City of New York.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732 (1985). 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 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). 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 and the papers will be scrutinized in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In support of Vinueza's motion, he submits the deposition and 50-h hearing testimony of plaintiff, the deposition of defendant, Marco Vinueza, the deposition of the City of New York and the affidavit of Mark L. Kramer, an expert meteorologist together with supporting weather records, which establish as follows: On January 31, 2017, at approximately 12:15 p.m., plaintiff was walking alone from his residence at 70 Marble Hill Avenue, Bronx, New York, to 228 Marble Hill Avenue, Bronx, New York, when he slipped and fell on the public sidewalk in front of 95 Marble Hill Avenue, Bronx, New York, due to snow and/or white ice. Plaintiff further testified that the

sidewalk where he fell did not appear to have been cleaned. Other than the direction that he was travelling, and that he fell on uncleaned white ice, plaintiff is incapable of remembering any further details of the circumstance surrounding his fall. Defendant, Marco Vinueza is the owner of 95 Marble Hill Avenue, but did not reside there at the time of the accident. He testified that he hired Roman Taveo to remove garbage from the property and remove snow, when necessary. He further testified that Mr. Taveo informed him that he had removed snow from the property between 8:00 am and 8:30 am that morning, however he has no personal knowledge of same. Mr. Kramer's affidavit and the supporting meteorological records yielded the following conclusions: The lack of snowfall and mild temperatures resulted in no snow, ice pellets and/or ice on the ground surfaces on the days leading up to and on January 30, 2017. No precipitation of any kind fell on January 30, 2017. On January 31, 2017, air temperatures remained below freezing through the time of the plaintiff's slip and fall at approximately 12:15 p.m. On January 31, 2017, a snowstorm commenced around 10 a.m., approximately two hours prior to the slip and fall, and continued after the slip and fall for hours. On January 31, 2017, the snow kept accumulating past 12:15 p.m. and the total snowfall for the storm is estimated at approximately 1.5 inches. As such, defendant has established that the snowstorm started prior to the plaintiff's slip and fall, was ongoing at around the time of the slip and fall, continued afterwards, and that there was no snow on the ground prior to the storm.

A property owner will not be held liable for slip and fall accidents on its property and/or abutting sidewalk as a result of an accumulation of snow and/or ice until a reasonable period of time has passed, following the cessation of the storm, to permit the owner to remove and/or ameliorate the hazards caused thereby. See *Sherman v. New York State Thruway Authority*, 27 N.Y.3D 1019 (2016); *Yu Yang Zheng v. Fu Jian Hong Guan American Unity Association. Inc*., 165 A.D.3d 486 (1st Dep't. 2018); *Barresi v. Putnam Hosp. Ctr*., 71 A.D.3d 811 (2d Dep't. 2010).

Further, a lull in the storm does not impose a duty upon the owner to remove snow and/or ice before the storm ceases in its entirety. See *Rabonowitz v. Marcovecchio*, 119 A.D.3d 750 (2d Dep't. 2014). Therefore, a defendant establishes entitlement to summary judgment as a matter of law by presenting evidence of a storm in progress at the time of the plaintiff's slip and fall on snow and/or ice and the lack of evidence of pre-existing snow and/or ice at the accident location. See *Ryan v. Beacon Hill Estates Coop., Inc.*, 170 A.D.3d 1215 (2d Dep't. 2019). As such, plaintiff has established a *prima facie* entitlement to summary judgment.

Plaintiff's opposition is premised on defendant's testimony that he was told by Mr. Taveo that he had cleaned the subject sidewalk that morning and that as such, defendant's employee must have created a more dangerous situation by attempting to shovel. Plaintiff does not oppose defendant's expert testimony establishing that at the time that defendant's employee was allegedly clearing the snow, there was no snow on the ground. Further, defendant has no personal knowledge that any snow was actually cleaned and plaintiff testified that the sidewalk had not been cleaned. Further, the mere failure of a defendant to remove all of the snow and ice, without more, does not establish that the defendant increased the risk of harm. *Aronov v. St. Vincent's Hous. Dev. Fund Co., Inc.*, 145 A.D.3d 648 (2d Dept 2016). Speculation that shoveling created the icy condition is insufficient to raise a triable issue of fact to defeat a motion. *Krichevskaya v. City of New York*, 30 A.D.3d 471 (2d Dept 2006). Although the courts have recognized the duty of a landowner who undertakes snow removal efforts during an ongoing storm, the facts must still permit an inference that the defendant's snow removal efforts caused the plaintiff's injury. *Nadel v Cucinella*, 299 A.D.2d 250 (1st Dept 2002). A plaintiff must provide support for such allegations. *Espinal v. Melville Snow Contractors, Inc.*, 98 N.Y.2d 136, 773 N.E.2d 485, 746 N.Y.S.2d 120 (2002). As

such, plaintiff has failed to raise an issue of fact to defeat defendant, Marco Vinueza's *prima facie* showing.

The City of New York also moves for summary judgment, dismissing this action as it had no duty to clear snow and ice from the subject location and did not attempt same. Section 7-210 of the Administrative Code states that "the owner of real property abutting any sidewalk, including, but not limited to; the intersection quadrant for corner property shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition." *N.Y. Admin. Code, N.Y.C., N.Y.* §7-210 (2003). The section further indicates that "[t]his subdivision shall not apply to one, two, or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes." *Id.* Also, "[n]otwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two-or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section." *Id.* To determine if the City is liable under 7-210, the court will look at: (1) the location of the sidewalk where the alleged accident transpired; (2) the non-City ownership of the real property that abuts the location where the alleged accident occurred; and (3) the non-exempt building classification of the abutting property. *Id.*

In support of its motion, the City of New York submits the affidavits of David Atik an employee of the Department of Finance and David Schloss, a Senior Title Examiner employed by the New York City Law Department, which establish that the property is not owned by the City of

New York and is owned by Vinueza and the deposition testimony of Eric Burwell, a supervisor with the Department of Sanitation and the affidavit of Robert Falcaro, a supervisor with the Department of Sanitation, which establishes that the City of New York did not clear snow from the area at the relevant times. As such, the City of New York has established a *prima facie* entitlement to summary judgment, which plaintiff does not oppose.

ORDERED that both of defendants' motions for summary judgment are granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

4/30/2020
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**