

Edwards v Genting of N.Y. LLC
2020 NY Slip Op 32968(U)
September 3, 2020
Supreme Court, Kings County
Docket Number: 504297/2016
Judge: Reginald A. Boddie
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At an IAS Trial Term, Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 3rd day of September 2020.

PRESENT:

Honorable Reginald A. Boddie, JSC

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LEBERT EDWARDS,

Plaintiff,

Against

GENTING OF NEW YORK LLC,

Defendant.

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GENTING NEW YORK LLC,

Third-Party Plaintiff,

Against

ELITE PARKING AREA MAINTENANCE, INC, and ELITE SNOW INC.,

Third-Party Defendants.

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Index No. 504297/2016
Cal. No. 10, 11, 12
MS 2, 3, 4

DECISION AND ORDER

2020 SEP -8 PM 12:12
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<u>Papers</u>	<u>Numbered</u>
MS 2	Docs. # 48-66, 102, 107-116, 141
MS 3	Docs. # 75-77, 127-136, 139, 140
MS 4	Docs. # 68-74, 103-106, 117-126, 137-138

Upon the foregoing cited papers, the decision and order on the above-cited motions for summary judgment, pursuant to CPLR 3212, is as follows:

Plaintiff commenced this action against defendant Genting New York LLC (Genting), owner of the premises known as Resorts World Casino New York City and located at 110-100 Rockaway Boulevard, Jamaica, New York, to recover for personal injuries allegedly sustained at approximately 1:00AM on February 23, 2015, in a slip and fall on black ice in parking lot D-2. On

the date of the accident, Genting and Elite Parking Area Maintenance, Inc. (Elite Parking) had a contract for snow removal services.

Genting (MS 2) moved for dismissal of plaintiff's claims against it and summary judgment on its third-party claims for breach of contract against third-party defendants, Elite Parking and Elite Snow Inc. (Elite Snow) for their alleged failure to procure insurance on behalf of Genting and name Genting as an additional insured pursuant to the contracts between the parties. The third-party complaint demanded indemnification or contribution for damages related to plaintiff's claims and "judgment for all damages associated with the third-party defendants' breach of contract, including any fees, premiums or other costs associated with the procurement of insurance on behalf of defendant/third-party plaintiff."

Elite Parking (MS 3), adopting the arguments of Elite Snow, and Elite Snow (MS 4) cross-moved for summary judgment to dismiss Genting's third-party complaint for breach of contract/failure to procure insurance. On the basis of admissions in the EBT testimony of Glenn Findlay, Genting is granted summary judgment on its third-party claims for breach of contract against Elite Parking and Elite Snow. Accordingly, Elite Parking and Elite Snow's motions (MS 3 and 4) for summary judgment dismissing the third-party complaint are denied.

Genting also sought summary judgment on the issue of liability on the grounds that it did not create the black ice condition or have actual or constructive notice of the condition. A property owner will be held liable for a slip-and-fall accident involving snow and ice on its property only when it created the dangerous condition which caused the accident or had actual or constructive notice of its existence (*Cuillo v Fairfield Prop. Servs., L.P.*, 112 AD3d 777, 778 [2d Dept 2013], citing *see Mignogna v 7-Eleven, Inc.*, 76 AD3d 1054, 1054-1055 [2d Dept 2010]; *Crosthwaite v Acadia Realty Trust*, 62 AD3d 823, 825 [2d Dept 2009]). To establish entitlement to summary

judgment, movant must produce evidence from its employees who were at the premises on the day of the accident and who were responsible for shoveling and salting the area where the plaintiff allegedly fell, stating when the parking lot was last inspected, shoveled, or plowed (*Mignogna*, 76 AD3d at 1055, citing *see Totten v Cumberland Farms, Inc.*, 57 AD3d at 654; *Gerbi v Tri-Mac Enters. of Stony Brook, Inc.*, 34 AD3d 732 [2006]).

Here, Genting alleged its premises were constantly monitored and that people performed quality walks around the premises to look for hazardous conditions. Genting's failure to provide evidence to substantiate such would generally warrant denial of summary judgment (*see Mignogna*, 76 AD3d at 1055, citing *see Totten v Cumberland Farms, Inc.*, 57 AD3d at 654; *Gerbi v Tri-Mac Enters. of Stony Brook, Inc.*, 34 AD3d 732 [2006]). Here, however, the record established snow plowing and salting had been done at the premises between 3:00PM on Saturday, February 21, 2015, to 7:00AM on February 22, 2015. Plaintiff's expert meteorologist concluded that "freezing rain/rain and snow" fell from 4:50AM until approximately 8:15AM on February 22, 2015, when precipitation ceased, and 0.2 inches of snow and ice accumulated on February 22. Plaintiff's expert further opined that five inches of snow and ice was present at 12:00AM on February 22, and three inches of snow and ice would have remained on untreated, undisturbed and exposed outdoor surfaces at the premises at 11:59PM on February 22.

Plaintiff testified he observed that the parking lot had been cleared and there was snow in piles when he arrived at the casino. He averred that whoever performed the snow removal did not do a good job. He observed water and ice in the parking lot when he arrived. He testified he did not have trouble traversing the parking lot and sidewalks when he entered the casino around 11:00PM on February 22, and the temperature was much colder when he left the casino around

1:00AM on February 23. He also testified that there was no snow where he fell and he did not see the black ice prior to his fall.

In opposition to Genting's motion, plaintiff provided no evidence of actual or constructive notice of the black ice in the parking lot, which he admittedly did not see. Plaintiff also failed to provide any nonspeculative basis for averring the snow clearing efforts were negligent or that they exacerbated the dangerous conditions that were created by the prior snow fall. Here, the record established that snow removal and salting was completed on February 22, 2015, and plaintiff failed to raise a triable issue of fact as to whether Genting created or had actual or constructive notice of the black ice condition that caused his fall. Accordingly, Genting's motion for summary judgment (MS 2) is granted and the complaint against it is dismissed (*see Ellassad v Nastasi*, 165 AD3d 1040, 1041 [2d Dept 2018]; *see also Pena v City of New York*, 161 AD3d 522, 522-523 [1st Dept 2018]).

Therefore, it is ORDERED: MS 2 is granted in entirety and the complaint against Genting is dismissed. MS 3 and 4 are denied. The issue of damages on Genting's third-party claim for breach of contract against Elite Parking and Elite Snow is severed and shall proceed to trial.

ENTER:

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Honorable Reginald A. Boddie
Justice, Supreme Court

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