

**Lin v Farrington Arms Condominium**

2020 NY Slip Op 34696(U)

May 7, 2020

Supreme Court, Queens County

Docket Number: Index No. 713994/18

Judge: Janice A. Taylor

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This opinion is uncorrected and not selected for official publication.

**FILED**

Short Form Order

**5/12/2020**

NEW YORK SUPREME COURT - QUEENS COUNTY

**2:33 PM**

Present: HONORABLE JANICE A. TAYLOR  
Justice

IAS Part 15

**COUNTY CLERK  
QUEENS COUNTY**

-----x  
XIAO H. LIN,

Plaintiff(s),

Index No.:713994/18

Motion Date:11/26/19

Motion Seq. No: 1

- and -

FARRINGTON ARMS CONDOMINIUM  
ALL AREA REALTY SERVICES, INC.,

Defendant(s).  
-----x

The following papers numbered 1 -10 read on this motion by defendants for an order granting summary judgment and dismissing the complaint.

Papers  
Numbered

Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibit-Service.....	5 - 7
Reply Affirmations-Exhibits-Service.....	8 - 10

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for personal injuries allegedly sustained by the plaintiff on March 21, 2018 when she fell on a sidewalk located in front of 114-28 Barclay Avenue in the County of Queens, City and State of New York. Plaintiff asserts that her fall was due to snow on the subject sidewalk.

Defendants now move, pursuant to CPLR §3212, for summary judgment and dismissal of the complaint against them. It is well-settled that an owner or lessee of property is under no duty to pedestrians to remove snow and ice that naturally accumulates upon the public sidewalk in front of his or her premises unless a statute or ordinance specifically imposes tort liability for failing to do so (see, *Jablons v. Peak Health Club, Inc.*, 2005 N.Y. App. Div. LEXIS 6023 [2d Dept. 2005]; *Klotz v. City of New York*, 9 A.D.3d 392 [2d Dept. 2004]; *Rao v. Hatanian*, 2 A.D.3d 616 [2d Dept. 2003]; *Muro v. Romano*, 301 A.D.2d 582 [2d Dept. 2003]; *Verdino v. Alexandrou*, 253 A.D.2d 553 [2d Dept. 1998]; *Stewart v. Yeshiva Nachlas Haleviym*, 186 A.D.2d 731 [2d Dept. 1992]).

A failure to remove all of the snow is not negligence and liability will not result unless it is shown that the defendant made the sidewalk more hazardous through his or her removal efforts. (See, *Spicehandler v. New York*, 303 N.Y. 946 [1952]; *Jablons v. Peak Health Club, Inc.*, *supra*; *Rao v. Hatanian*, *supra*; *Muro v. Romano*, *supra*; *Yen Hsia v. City of New York*, 295 A.D.2d 565 [2d Dept. 2002]; *Case v. City of New York*, 295 A.D.2d 464 [2d Dept. 2002]; *Klein v. Chase Manhattan Bank*, 290 A.D.2d 420 [2d Dept. 2002]); *Palmer v. City of New York*, 287 A.D.2d 553 [2d Dept. 2001]; *Prado v. City of New York*, 276 A.D.2d 765 [2d Dept. 2000]; *Alexis v. Lessey*, 275 A.D.2d 754 [2d Dept. 2000]; *Goldstein v. Moskowitz*, 271 A.D.2d 489 [2d Dept. 2000]; *Lakhan v. Singh*, 269 A.D.2d 427 [2d Dept. 2000]; *Bautista v. City of New York*, 267 A.D.2d 265 [2d Dept. 1999]; *Rector v. City of New York*, 259 A.D.2d 319 [1<sup>st</sup> Dept. 1999]).

As a general rule, the owner of premises may await the end of a snow or ice storm and for a reasonable time thereafter before undertaking protective measures to correct storm-created, hazardous conditions caused by accumulated ice and snow upon its outside walks and steps (See, *Whitt v. St. John's Episcopal Hospital*, 258 A.D.2d 648 [2d Dept. 1999]; see generally, *Simmons v Metropolitan Life Ins. Co.*, 84 N.Y.2d 972 [1994]);). "A party in control of real property may be held liable for accidents occurring as a result of a hazardous condition created on the premises because of an accumulation of snow or ice only if an adequate period of time has passed following the cessation of a storm to allow the party to remedy the condition" (see, *Russo v. 40 Garden St. Partners*, 6 A.D.3d 420, 420-421 [2d Dept. 2004]; *Myrow v. City of Poughkeepsie*, 3 A.D.3d 480 [2d Dept. 2004]; *Hassanein v. Long Is. R.R. Corp.*, 307 A.D.2d 954 [2d Dept. 2003]; *Dowden v. Long Is. R.R.*, 305 A.D.2d 631 [2d Dept. 2003]).

In support of the instant application, the movants submit the affidavit of Steven Roberts, a Certified Consulting Meteorologist. In his affidavit, Mr. Roberts states that based on his review of climatological reports, there was snow and precipitation at the time of plaintiff's accident and that the precipitation continued until after plaintiff's fall. Thus, defendants established their *prima facie* entitlement to summary judgment by demonstrating that an adequate amount of time had not passed for them to remedy any hazardous condition resulting from the accumulation of snow and ice (see, *Go v. High View Estates Owners Corp.*, 793 N.Y.S.2d 98 [2d Dept. 2005]; *Dowden v. Long Is. R.R.*, 305 A.D.2d 631, 759 N.Y.S.2d 544; *Whitt v St. John's Episcopal Hosp.*, *supra*; *Arcuri v. Vitolo*, 196 A.D.2d 519 [2d Dept. 1993]). The plaintiff failed to provide evidence in

opposition sufficient to raise a triable issue of fact. Accordingly, the motion is granted and the complaint is dismissed in its entirety.

Dated: May 7, 2020

  
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**JANICE A. TAYLOR, J.S.C.**

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**FILED**

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QUEENS COUNTY**