

Schafran v South Nassau Communities Hosp.
2021 NY Slip Op 33585(U)
September 2, 2021
Supreme Court, Nassau County
Docket Number: Index No. 613227/2019
Judge: David P. Sullivan
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SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: HON. DAVID P. SULLIVAN,
Supreme Court Justice.

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IAS/TRIAL PART 22

FRANCINE SCHAFFRAN,

Plaintiff,

Index No. 613227/2019

Motion Seq. No. 001

Motion Submitted: 06/23/2021

-against-

SOUTH NASSAU COMMUNITIES HOSPITAL,

Defendant.

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The following papers read on these motions:

Notice of Motion.....1
Opposition.....2
Reply.....3

Defendant moves for an order, pursuant to CPLR §3212, dismissing Plaintiff's complaint against it in this premises liability action. Plaintiff has opposed the motion and Defendant has submitted reply papers. After review and consideration, Defendant's motion is hereby denied in its entirety.

On February 11, 2017, Plaintiff went to the hospital campus of Defendant to visit her mother, who had been admitted to the hospital some days prior to this date. She arrived at the hospital at approximately 10:00am, parked her car in the appropriate lot, and walked into the hospital through the main entrance without incident. Although it had snowed the night before, this day was clear and sunny, yet still cold. She stayed in the hospital for a visit with her mother until approximately 2:00 p.m., at which time she exited through the same area she entered at and

used the same route through the parking lot to return to her vehicle. As Plaintiff neared her vehicle, however, she alleges that she slipped and fell on ice in the area. Plaintiff's bill of particulars alleges that as a result of her fall, she sustained injuries to her right hand, including a fracture of her small finger.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 NY2d 320, 508 NYS2d 923 (1986). To make a prima facie showing, the motion must be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. Id. Once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. Id.; *see also* Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 (1980).

It is well settled that a landowner owes a duty of care to maintain his or her property in a reasonably safe condition. Yehia v. Marphil Realty Corp., 130 AD3d 615, 13 NYS3d 194 (2nd Dept. 2015). Within said duty is the obligation to remove dangerous or defective conditions from the premises. Sellitti v. TJX Cos., Inc., 127 AD3d 724, 6 NYS3d 559 (2nd Dept. 2015). A defendant may be held liable for a dangerous condition on its premises caused by the accumulation of snow or ice upon a showing that it had actual or constructive notice of the condition, and that a reasonably sufficient time had lapsed since the cessation of the storm to take protective measures. Fenner v. 1011 Route 109 Corp., 122 AD3d 669, 996 NYS2d 341 (2nd Dept. 2014).

To constitute constructive notice, a defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit the defendant's employees to discover and remedy it. Lombardo v. Kimco Central Islip Venture, LLC, 153 AD3d 1340, 60 NYS3d 497 (2nd Dept. 2017). To meet its burden on the issue of lack of constructive notice, a defendant is required to offer some evidence as to when the accident site was last cleaned or inspected prior to plaintiff's fall. Milorava v. Lord & Taylor Holdings, LLC, 133 AD3d 724, 20 NYS3d 398 (2nd Dept., 2015). Mere reference to general practices is insufficient to establish a lack of constructive notice. Fortune v. Western Beef, Inc., 178 AD3d 671, 115 NYS3d 93 (2nd Dept., 2019).

In support of the motion, Defendant has submitted a copy of the Plaintiff's deposition transcript, as well as the deposition transcript from its assistant director of engineering and maintenance. Plaintiff's deposition offers minimal, if any, assistance on the issue of liability from the Defendant's perspective; that is to say, although Defendant's moving papers argue that she slipped on black ice that she couldn't see, nowhere in her entire testimony does Plaintiff refer to or acknowledge that the cause of her slip-and-fall was black ice. Rather, Plaintiff's testimony was that she did not see what exactly she slipped on until she hit the ground and then tried to get up, confirming that she did in fact slip on ice in the subject location. Furthermore, Plaintiff's testimony with regard to the weather on that date of this incident was only that it was "slushy" when she first arrived, that it had snowed earlier that morning, and that while the sun was out, the temperature was right around freezing. Plaintiff also testified that her slip and fall occurred within five feet of the trunk of her vehicle and that the ice patch which she slipped on was an oblong four feet by six feet. She did not see any salt or sand in the parking lot area, but only in front of the main entrance.

Of greater important to the current application before the Court is the testimony submitted by Defendant from its own witness. The assistant director of engineering and described the general processes and practices used by Defendant in clearing snow from the parking lot, as well as what situations would require the use of an outside contractor to clear away same. He also testified that Defendant's employees were tasked with performing visual inspections of the parking lot after a snow event. Despite all of this general information, the deponent was unable to articulate what work, if any, was done on the date of the subject incident to keep the parking lot clear of snow and ice at the site, when the last time any clearing of snow and ice was done in the subject area that day, and when exactly an inspection last occurred of the immediate area prior to this incident. The deponent also made clear that there were not any records for when snow and ice removal took place at Defendant's property whatsoever, indicating that the only records available would be for the amount of salt purchased around that time. Thus, on the issue of notice, this Court is left to speculate as to whether or not Defendant had actual or constructive notice of icy conditions in the parking lot where Plaintiff's incident occurred, if they were treated, and if Defendant fulfilled its duty.

Therefore, given all of the foregoing, this Court finds that Defendant has failed to satisfy its prima facie burden on the motion. As such, the Court need not address the sufficiency of Plaintiff's papers in opposition. *See Bonilla v. Calabria*, 80 AD3d 720, 915 NYS2d 615 (2nd Dept., 2011). Accordingly, Defendant's motion for summary judgment to dismiss Plaintiff's complaint is hereby denied. *See Castillo v. Silvercrest*, 134 AD3d 977, 24 NYS3d 86 (2nd Dept., 2015); *see also Smith v. New York City Housing Authority*, 124 AD3d 625, 1 NYS3d 296 (2nd Dept., 2015).

Defendant shall file and serve a copy of the within order with notice of entry upon Plaintiff within thirty (30) days from the date of this order. Thereafter, the parties shall appear in the DCM Trial Part of Supreme Court, Nassau County, on January 25, 2022.

This hereby constitutes the Decision and Order of this Court.

Dated: September 2, 2021
Mineola, New York

ENTER


HON. DAVID P. SULLIVAN, J. S. C.

ENTERED

Sep 03 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE