SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

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GERMANIA VENTURA,
Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MC19 HOUSTON LLC, MADISON CAPITAL, MADCAP PROPERTIES, LLC,
Defendant

INDEX NO. 154414/2015

MOTION SEQ. NO. 004

DECISION AND ORDER ON MOTION

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NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY

Plaintiff

-against-

CITY OF NEW YORK
Defendant

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HON. DENISE DOMINGUEZ:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141

were read on this motion to/for JUDGMENT - SUMMARY

Upon reading the above listed documents and having heard oral arguments, for the reasons that follow, the motions for summary judgment pursuant to CPLR 3212 by Third-Party Defendant, City of New York, (hereinafter "City") and Defendant and Third-Party Plaintiff, New York City Transit Authority and Metropolitan Transportation Authority (hereinafter "Transit") are denied.

Background

This personal injury matter arises out of a slip and fall accident on February 9, 2015. Plaintiff, Germania Ventura, alleges sustaining serious injuries when she slipped and fell on the public sidewalk in front of 19 East Houston Street, New York, NY, due to snow and/or ice.

Plaintiff commenced this negligence action on May 4, 2015. On November 15, 2016, through an order of consolidation, Defendants, New York City Transit Authority, Metropolitan Transportation Authority, (Transit), MC 19 Houston LLC, Madison Capital and Madcap Properties LLC. were added to this case.

On August 10, 2018, Transit filed a third-party complaint against the City of New York (City), alleging that the City owned the property at 19 East Houston Street, and as property owner, had the duty to maintain the sidewalk.

The City, as a Third-Party Defendant answered and now moves for summary judgment. Transit, as Defendants and Third-Party Plaintiffs, also cross-move for summary judgment. Plaintiff opposes both motions.

Discussion

The rights of third-party defendants are governed by CPLR 1008. Third-party defendants "have the rights of a party adverse to the other parties"(CPLR 1008), such as moving for summary judgment (*see, e.g., Muniz v. Church of Our Lady of Mt. Carmel,* 238 AD2d. 101 [1st Dept. 1997]).

Pursuant to New York City Administrative Codes, every building owner in New York City that abuts a street with a paved sidewalk is required to remove snow from the sidewalk four hours after the snow stops falling (excluding the hours of 9:00 p.m. through 7:00 a.m.) (*see* Administrative Code of the City of N.Y. §§7-210, 16-123 [a]).

However, municipalities such as the City of NY, with the unique burden of cleaning miles of streets and sidewalks after a snowstorm, are allotted a far greater time than other property owners (*see, Martinez v Columbia Presbyt. Med. Ctr.*, 238 AD2d 286 [1st Dept 1997]).

Yet, a municipality that seeks summary judgment in a snow or ice negligence case is still required to establish the high burden of a right to judgment as a matter of law (see CPLR 3212; *Rodriguez v Woods*, 121 AD3d 474 (1st Dept 2014]; see e.g., *Massey v. Newburgh W. Realty, Inc.*, 84 AD3d 564 [1st Dept.2011]).

The City's Motion

Here, the City first argues that to the extent Plaintiff alleges that her accident was based on snow and ice that fell on the same day as her accident, the City contends that it cannot be held liable since it did not have a reasonable amount of time to clear the snow.

The City relies on *Valentine v City of New York* (86 AD2d 381, 383 [1st Dept]), for the proposition that a reasonable time is defined as "that period within which the municipality should have taken notice of the icy condition and, in the exercise of reasonable care, remedied it by clearing the sidewalk or otherwise eliminating the danger" (*id.* at 383).

The City also relies on cases such as *Martinez v Columbia Presbyt. Med. Ctr.*, 238 AD2d 286 (1st Dept 1997), *Monahan v City of New York,* 31 AD2d 933 (2d Dept 1969) and *Moss v City of New York*, 5 AD3d 312 [1st Dept 2004]), to argue that courts have found that a reasonable amount of time for the City to remove snow is at least 48 hours after the precipitation stops. The City therefore argues that a reasonable amount of time had not elapsed from the time Plaintiff allegedly fell at approximately 3:10 p.m. on February 9, 2015 and the time the snow fell that morning between 7:00 a.m. and 12:00 p.m.

In support, the City submits the February 2015 Local Climatological Data compiled by the United States Department of Commerce, National Climatic Data Center (NYSCEF Doc. No. 113). According to the data, on February 9, 2015, approximately 0.9 inches of snow and ice fell between 7:00 a.m. and 12:00 p.m. The City argues that the three hours which elapsed between the end of the precipitation and the time of Plaintiff's accident, do not constitute a reasonable amount of time for the City to have removed the snow and thus are not liable.

Secondly, the City contends that to the extent Plaintiff alleges that she slipped and fell on old ice from precipitation that fell prior to February 9, 2015, the weather conditions prior to February 9, 2015, do not support that argument.

The City relies again on the February 2015 Climatological Data, and alleges that there were only two other days when snow fell between February 1, 2015 and February 9, 2015. The City further alleges that a small amount of snow fell on February 7, 2015, and that the temperatures on February 7, 2015 and February 8, 2015, two days before the accident, ranged from 25 degrees to 40 degrees and thus could not have caused icy conditions since the temperatures were above the freezing level.

This Court disagrees with the City's arguments. Upon review, the City has not established entitlement to judgment as a matter of law. While the City correctly argues that it did not have a reasonable amount of time to remove precipitation that fell the same day as Plaintiff's accident, it does not establish that the Plaintiff's accident was not caused by accumulated precipitation. The City's papers are silent as the climate data showing that on February 2, 2015,

five inches of snow fell. The same evidence also shows that between February 2, 2015, and February 9, 2015, the temperature ranged as low as 12 degrees on February 6, 2015, and as high as 43 degrees on February 4, 2015. Thus, raising the question of whether any of the snow that fell on February 2, 2015, was present as snow or ice on the day of Plaintiff's accident, on February 9, 2015, approximately 144 hours later.

In addition, according to Plaintiff's testimony during examinations before trial, she fell on a patch of snow and ice. Further, the City does not provide any expert opinion to contend that the temperatures the two days prior to the accident, would not have allowed snow to freeze although on both days at some point the temperature fell below the standard freezing point of 32 degrees (*see e.g. Massey,* 84 AD3d 564 [1st Dept.2011]).

Accordingly, the City has not submitted sufficient evidence demonstrating the absence of material facts and the motion is denied (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Transit's Cross Motion

Transit cross-move for summary judgment and "in an effort to conserve judicial resources" adopts and incorporates the arguments in the City's papers.

Upon review, Transit's motion is denied as untimely. Transit filed this cross-motion for summary judgment on October 5, 2021, four days after the 120-day period for filing their motion and provide no explanation for the delay (*See* CPLR 3212[a]). While the delay is minimal, without good cause the motion is denied (*Brill v City of New York* (2 NY3d 648, 652 [2004]).

Accordingly, it is hereby

ORDERED that the motion by Third-Party Defendant the City of New York for summary judgement is denied; and it is further

ORDERED that the cross motion by Defendants/Third-Party Plaintiffs New York City Transit Authority and Metropolitan Transit Authority for summary judgment is also denied.

9/22/2022
DATE

HON. DENISE M. DOMINGUEZ
J.S.C.

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