

Green v 1057 Hoe Ave. LLC
2022 NY Slip Op 35140(U)
April 18, 2022
Supreme Court, Bronx County
Docket Number: Index No. 26151/2018E
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 6

Index No. 26151/2018

ALBANIA GREEN,

Plaintiff,

-against-

1057 HOE AVENUE LLC,

Defendant.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J. S. C.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion for summary judgment (seq. no. 4):

<u>Papers</u>	<u>Numbered</u>
Defendant's Notice of Motion, Affirmation of Renee Himmel, Esq. dated July 20, 2020 in Support of Motion, and Exhibits ("A" through "D").....	1
Affirmation of David Weissman, Esq. dated October 16, 2020 in Opposition to Motion and Exhibit ("1").....	2
Reply Affirmation of Renee Himmel, Esq. dated October 19, 2020 and Exhibits ("A" through "D").....	3

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The defendant seeks summary judgment pursuant to CPLR § 3212 dismissing the plaintiff's complaint in its entirety. The motion is denied in its entirety.

The plaintiff seeks monetary damages for personal injuries allegedly sustained on January 6, 2018 at around 9:45 a.m. when she slipped and fell on ice located on a sidewalk adjacent to the defendant's building. In order to obtain summary judgment, the defendant must demonstrate that there are no material issues of fact in dispute and that it is entitled to judgment as a matter of law under these undisputed facts (*see Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). To defeat such a showing, the plaintiff

must present facts in admissible form demonstrating that a genuine, triable issue(s) of fact exists precluding summary judgment (*see Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). Where a plaintiff claims to have been injured as a result of a fall on snow and/or ice, a defendant may be held liable if it is shown that it created or exacerbated a dangerous condition or had actual or constructive notice of it (*see Salvanti v. Sunset Industrial Park Associates*, 27 AD3d 546 [2nd Dept 2006]).

In support of its motion, the defendant submits the plaintiff's deposition testimony, highlighting the following testimony:

Q: Before you got onto the sidewalk, did you look to see what was on the sidewalk in front of you?

A: It had snow, but they had, like, cleaned the snow and it was all piled up on the side.

Q: Was there a path for you to walk?

A: Yeah, they had a space for you to walk.

In addition, the defendant submits a weather report purportedly indicating that it had snowed approximately 6 ½ inches on January 5, the day before the accident. The weather report reveals that the maximum temperature on January 5 was 19 degrees Fahrenheit and the maximum temperature on January 6 was 14 degrees Fahrenheit.

The defendant contends that this evidence demonstrates that there was no melting and refreezing cycle that would have created ice in the area and obligated the defendant to further attend to the area after having previously cleared the snow. The plaintiff clearly concedes that some attempt at clearing the previous day's snowfall had been made by the time of her accident, since she was able to walk on a path that had been created on the sidewalk.

Here, the defendant has made a *prima facie* showing that it neither created or exacerbated the dangerous condition which caused the plaintiff's injuries nor had notice thereof (*see Ellassad v. Nastasi*, 165 AD3d 1040 [2nd Dept 2018]). The plaintiff's own testimony shows that snow had been sufficiently cleared to provide a walking path subsequent to the most recent snowfall. To defeat the motion, the plaintiff must demonstrate an issue of fact as to whether the defendant's snow removal efforts created or exacerbated the icy condition (*see De La Cruz v. Lettera Sign & Electric Co.*, 77 AD3d 566 [1st Dept 2010]).

In opposition, the plaintiff contends that the defendant has not shown that it inspected the area to

ensure that all hazardous snow had been removed and that questions of fact remain concerning whether the defendant's snow removal efforts left behind ice patches and whether the defendant applied sand or salt to remedy the icy conditions. While the plaintiff references deposition testimony given on behalf of the defendant, no such transcript is submitted on this motion. Therefore, the Court will not entertain the plaintiff's arguments regarding the defendant's inspection of its snow removal efforts.

The plaintiff submits an affidavit from George Wright ("Wright"), a meteorologist retained by the plaintiff. Wright avers that his review of the deposition testimony and various weather data leads him to conclude that between 9-10" of snow fell at the subject location on January 4, that there was no precipitation of any kind after approximately 6:45 p.m. on January 4 through the time of the plaintiff's accident, and that the ice that the plaintiff described was a long-standing condition, having been present on the sidewalk for more than 42 hours prior to the accident. Contrary to the defendant's contention, Wright states that there was no precipitation on January 5, 2018, the day prior to the plaintiff's accident, but agrees that temperatures remained below freezing. Wright also finds that that the ice upon which the plaintiff slipped would not have been present had salt been applied. As noted by Wright, the plaintiff also testified as follows:

Q: Do you recall what it was that your foot slipped on?

A: I looked and I saw that it was ice.

Q: Was it a patch of ice; was it a big area?

A: Yeah, it was a big area of ice.

Q: How big?

A: About two to three feet of ice.

Q: And had there been any sand or salt applied to the sidewalk that you observed at that location where you fell?

A: No.

(see plaintiff's deposition transcript, p. 20, ll. 14-15).

This testimony by Wright and the plaintiff is sufficient to raise a material issue of fact regarding whether the defendant's snow removal efforts made the sidewalk more dangerous by exposing a slippery surface (see *Rugova v. 2199 Holland Avenue Apartment Corp.*, 272 AD2d 261 [1st Dept 2000]). In *Rugova*, the defendant's summary judgment motion was denied where the plaintiff testified that she slipped on a patch of ice that remained on a path that had been admittedly cleared on the sidewalk by the

defendant's porter. The Court found that a jury could reasonably infer that the porter's efforts increased the risk of slipping and falling (*see also Sanchez v. City of New York*, 48 AD3d 275 [1st Dept 2008]). Here, a jury could reach a similar conclusion based upon Wright's testimony that the ice that the plaintiff described was formed by January 4 and therefore would have existed at the time of the defendant's snow removal efforts, but was somehow left behind. Accordingly, the motion is denied.

The foregoing constitutes the Decision/Order of this Court.

DATED: April 18, 2022
Bronx, New York



HON. LAURA G. DOUGLAS
J.S.C.