

**Iliopoulos v Delbro Realty 1920 LLC**

2023 NY Slip Op 32629(U)

July 31, 2023

Supreme Court, New York County

Docket Number: Index No. 152228/2019

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

*Justice*

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INDEX NO. 152228/2019

ALEXANDROS ILIOPOULOS,

MOTION SEQ. NO. 003

Plaintiff,

- v -

DELBRO REALTY 1920 LLC, GLENWOOD MANAGEMENT  
CORP., WEST 64TH STREET LLC, and BROWN HARRIS  
STEVENS RESIDENTIAL SALES LLC**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for

JUDGMENT - SUMMARY.

In this premises liability action, defendants Delbro Realty 1920 LLC (Delbro), Glenwood Management Corp. (Glenwood), and West 64th Street LLC (West 64th) (collectively, defendants)<sup>1</sup> move, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

Factual and Procedural Background

This case arises from an incident on December 30, 2017, in which plaintiff was allegedly injured in front of a building located at 1930 Broadway in Manhattan (the premises) when he slipped on a patch of ice on the sidewalk (NYSCEF Doc No. 1). The premises were owned by Delbro, leased by West 64th, and managed by Glenwood (Doc No. 52). Plaintiff commenced this action against defendants, alleging that he was injured due to their negligent ownership, control, management, and/or maintenance of the sidewalk in front of the premises (Doc No. 1). Defendants joined issue by their answer dated May 9, 2019, denying all substantive allegations of wrongdoing

<sup>1</sup> Defendant Brown Harris Stevens Residential Sales LLC is no longer in this action after plaintiff stipulated to discontinuing his claims as against it (Doc No. 41).

and asserting various affirmative defenses (Doc No. 13). Defendants move for summary dismissal of the complaint (Doc Nos. 50, 52, 86), which plaintiff opposes (Doc No. 75).

Relevant Documents

Plaintiff's Deposition Testimony (Doc No. 57)

At his deposition, plaintiff testified that immediately prior to his accident he noticed it was lightly snowing, and that there was some accumulation on the ground, although he estimated that the accumulation was less than one centimeter. As he was walking, he slipped on "a patch of ice that was covered by . . . light snow." He did not see the patch of ice until after he fell. After he fell, a person from one of the nearby businesses asked where he slipped and salted the area after plaintiff pointed to it. He was shown a copy of surveillance video of the premises and confirmed that he was present in the video and that the video shows his accident as it occurred.

Defendant's Deposition Testimony (Doc No. 58)

The superintendent for the premises, who was employed by Glenwood, testified on behalf of defendants. The premises contained both residential and commercial tenants, and was managed by Glenwood. The superintendent was responsible for maintaining the sidewalk in front of the premises, which included the removal of snow and ice. However, there was no documented procedure for when to remove snow and ice, and no records were kept to document when such removal occurred. The decision to remove snow and ice was left to the discretion of the superintendent and other Glenwood employees who reported directly to him. They normally waited until snow started falling and accumulating on the ground before performing any work to clear the sidewalk; they did not perform any work like salting in advance of any precipitation. The superintendent stated that he was not working on the day of the incident, and was unaware of

whether any snow and ice removal occurred that day. He also never received any complaints about snow or ice on the sidewalk.

*Building Porter Deposition Testimony (Doc No. 59)*

A porter for the premises, also employed by Glenwood, testified about the snow and ice removal procedures. He confirmed much of the superintendent's testimony, i.e., that he and other maintenance workers were responsible for maintaining the sidewalk which included the removal of snow and ice, and that there were no records of when such removal occurred. He also explained that normally such removal would not occur until snow was falling, but sometimes work would be done in advance of any accumulation. He also confirmed that he was present in the surveillance video and salted the sidewalk after plaintiff's accident.

*Surveillance Video (Doc No. 55)<sup>2</sup>*

The surveillance video showed the sidewalk where plaintiff fell from 11:27 a.m. to approximately 1:03 p.m. Although there was some scaffolding or metal piping partially obstructing the camera's view, plaintiff can be seen slipping and falling at roughly 12:13 p.m. Snow accumulation can be seen on the street, sidewalk, and cars surrounding the premises, but the condition of the sidewalk where plaintiff slipped and fell was unclear. Several minutes later, a man appeared with a salt spreader and began to salt the sidewalk in front of the premises. Shortly thereafter, plaintiff entered a taxi with another individual and left the area.

*Affidavit of Defendants' Experts (Doc No. 60)*

In their affidavit, defendants' experts concluded that on December 30, 2017, the date of plaintiff's incident, a winter storm occurred from approximately 9:05 a.m. until 2:17 p.m., with

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<sup>2</sup> The video is split across two different MP4 files. The first file shows the sidewalk from 11:27 a.m. to approximately 12:16 p.m., and the second file shows the sidewalk from 12:16 p.m. to approximately 1:03 p.m. The second file picks up immediately where the first file left off.

“some occasional lulls” in between. Thus, at the time of plaintiff’s incident, a winter storm was in progress, as “light to moderate snow was falling” and “snow was actively accumulating.” No snow or ice was present for at least three days prior to the start of the winter storm on December 30th, and the air temperature conditions on that day caused slippery conditions to develop.

*Affidavit of Plaintiff’s Expert (Doc No. 83).*

In his affidavit, plaintiff’s expert concluded that “light snow was falling” at the time of plaintiff’s incident on December 30, 2017, which resulted in approximately .4” of snow accumulation on the ground. However, any ice present on the premises was not the result of an ongoing winter storm; it was caused by preexisting snow and/or ice from the days prior to December 30th that melted and refroze.

Legal Analysis and Conclusions

“Although a landowner owes a duty of care to keep his or her property in a reasonably safe condition, he will not be held liable in negligence for a plaintiff’s injuries sustained as the result of an icy condition occurring during an ongoing storm or for a reasonable time thereafter” (*Sherman v New York State Thruway Auth.*, 27 NY3d 1019, 1020-1021 [2016] [internal quotation marks and citations omitted]; see *Rosario v Prana Nine Props., LLC*, 143 AD3d 409, 410 [1st Dept 2016]).

Here, defendants have made a prima facie showing that “there was an ongoing storm at the time plaintiff allegedly slipped and fell on an icy condition by submitting plaintiff’s testimony acknowledging that it was snowing at the time, as well as the weather records and an expert affidavit from . . . meteorologist[s]” (*DeJesus v Belle Apts. Hous. Dev. Funding Corp.*, 191 AD3d 424, 424-425 [1st Dept 2021] [citations omitted]; see *Lowenstern v Sherman Sq. Realty Corp.*, 165 AD3d 432, 432 [1st Dept 2018] [finding defendants demonstrated entitlement to summary

judgment by submitting deposition testimony and meteorologist affidavit establishing storm in progress at time of plaintiff's accident], *lv denied* 33 NY3d 906 [2019]).

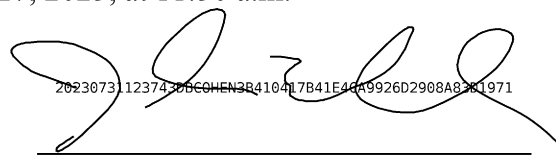
However, plaintiff has demonstrated that triable questions of fact exist. By submitting the affidavit of his expert concluding that the ice on the sidewalk was pre-existing prior to December 30th and not caused by the then-ongoing storm, and highlighting the lack of evidence from defendants about the last time the area was inspected or cleaned before the accident, "there are triable issues of fact as to whether plaintiff's fall was caused by pre-existing ice on the ground or the storm in progress and whether [defendants] had a reasonable time to remedy any alleged icy condition before the date of plaintiff's fall" (*Perez v Raymours Furniture Co., Inc.*, 173 AD3d 597, 597-598 [1st Dept 2019]; *see Mike v 91 Payson Owners Corp.*, 114 AD3d 420, 420 [1st Dept 2014] ["(T)he conflicting expert affidavits as to the weather conditions that existed on the day of and days prior to the accident raised triable issues as to whether the ice that allegedly caused the accident was formed before the storm, as opposed to being created by the precipitation from the storm in progress."]).

Therefore, defendants' motion for summary dismissal must be denied (*see e.g. Berganzo v Bronx Realty Group LLC*, 179 AD3d 574, 574 [1st Dept 2020] [affirming denial of motion for summary judgment dismissing complaint because plaintiff raised triable issues of fact regarding creation of icy condition upon which she slipped]).

Accordingly, it is hereby:

ORDERED that the motion by defendants Delbro Realty 1920 LLC, Glenwood Management Corp., and West 64th Street LLC for summary judgment dismissing the complaint is denied; and it is further

ORDERED that the parties shall appear for a trial scheduling/settlement conference in person at 71 Thomas Street, Room 305, on September 27, 2023, at 11:30 a.m.



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7/31/2023  
DATE

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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE