

Chadrjian v 1278-1284 First Ave. Realty LLC

2023 NY Slip Op 34470(U)

December 20, 2023

Supreme Court, New York County

Docket Number: Index No. 153053/2021

Judge: Judy H. Kim

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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. JUDY H. KIM PART

Justice

-----X

MICHELE CHADRJIAN,

Plaintiff,

- v -

1278-1284 FIRST AVENUE REALTY LLC, FAMOUS
FAMIGLIA PIZZERIA, THE CITY OF NEW YORK,

Defendants.

-----X

INDEX NO. 153053/2021

MOTION DATE 05/09/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, plaintiff Michele Chadrjian’s motion to disqualify counsel is denied as moot, in light of plaintiff’s withdrawal of same, and the cross-motion by defendants 1278-1284 First Avenue Realty LLC and Famous Famiglia Pizzeria (the “Moving Defendants”), pursuant to CPLR §3212, for summary judgment dismissing plaintiff’s complaint and all cross-claims asserted against them is denied for the reasons set forth below.

FACTUAL BACKGROUND

Plaintiff testified that on Saturday, February 2, 2021, at approximately 6:50 a.m., she slipped and fell on ice on the pedestrian ramp at the southeast corner of First Avenue and 69th Street, New York, New York, sustaining injuries. She testified that she did not notice the ice prior to her fall.

George Aryeh, the managing agent for the building located at 1284 First Avenue, New York, New York (the “Building”) testified that Famous Famiglia Pizzeria is a tenant of the

Building and that he believed its lease required it to clean the sidewalk in front of the pizzeria. He further testified that the Building's superintendent was Jose Mendoza, and that his duties included removing snow from the sidewalk abutting the entrance to the Building, though he further testified that snow removal could include the pedestrian ramp at issue here.

Jose Mendoza testified that, as superintendent of the Building, it was not his responsibility to remove snow or ice from the pedestrian ramp or the sidewalks by the pizzeria but only to clean and shovel the sidewalk and steps directly in front of the building entrance on East 69th Street. He testified that the employees of Famous Famiglia Pizzeria would shovel snow and ice from the sidewalks in front of their pizzeria.

Finally, Fatmir Shala, the manager of the Famous Famiglia Pizzeria from 2004 through July 2022, testified that the staff of Famous Famiglia Pizzeria "always" shoveled the pedestrian ramp in question after a snowfall and salted the sidewalk and ramp during and after snowstorms. Shala testified that the Building's staff would sometimes help him clear snow, though he was uncertain as to whether this included help clearing the subject pedestrian ramp.

The Moving Defendants now move for summary judgment, arguing that under Administrative Code §7-210, they bear no liability for defective conditions on pedestrian ramps and that they have further established that the condition at issue was caused and created by the City's snowplow operations. In opposition, plaintiff argues that triable issues of fact exist as to whether the Moving Defendants removed snow and ice from the pedestrian ramp and whether such removal created or exacerbated the hazardous icy condition on the pedestrian ramp that caused plaintiff's fall.

DISCUSSION

“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. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, 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” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

The Moving Defendants have not met their burden here. While the moving defendants have no statutory obligation to maintain the pedestrian ramp at issue, if it undertakes to do so, it may be held liable in negligence where its actions create or increase the hazards (See Prenderville v Intl. Serv. Sys., Inc., 10 AD3d 334, 336-38 [1st Dept 2004]). As such, in order to make a prima facie showing, the Moving Defendants were “required to establish that they did not perform any snow removal operations with respect to the condition that caused this plaintiff’s injury, or, alternatively, that if they did perform such operations, those efforts did not create or exacerbate a dangerous condition” (Id.).

They have failed in both respects. Shala’s testimony that Famous Famiglia always cleared pedestrian ramp of question of snow, taken together with his testimony (and that of the Building’s managing agent) that Building employees sometimes helped Famous Famiglia in its snow removal efforts, including clearing the pedestrian ramp in question, raises an issue of fact as to whether the Moving Defendants performed snow removal prior to plaintiff’s fall (See Id.)

Nor have the Moving Defendants submitted evidence establishing that their performance of such could not have created the icy condition that led to her fall (Compare Ray v Apple Sq. LLC, 174 AD3d 416, 416-17 [1st Dept 2019] [“Neither the president of McGuire's nor its painting supervisor provided evidence based on personal knowledge as to the work that was actually performed in the parking lot two days before the accident and as to its condition after the work was completed”] with Joseph v Pitkin Carpet, Inc., 44 AD3d 462, 463-64 [1st Dept 2007] [the affidavit and deposition testimony of its proprietor and the deposition testimony of plaintiff established that defendant’s snow removal efforts on December 13 were simply incomplete, and that following such efforts, “most of the sidewalk was clear and no ice was present”]).

In any event, “[e]ven had these defendants met their initial burden . . . plaintiffs have offered facts here which support their claim that the snow removal efforts created a hazardous condition in the pedestrian ramp, including the injured plaintiff’s testimony that she slipped on slushy ice on a curb cut that was immediately between two piles of snow banked up along the sidewalk . . . [which creates] a reasonable inference that the incomplete snow removal operations created or exacerbated the hazardous condition on the curb cut” (Prenderville v Intl. Serv. Sys., Inc., 10 AD3d 334, 338 [1st Dept 2004] [internal citations omitted]; see also Santiago v New York City Hous. Auth., 274 AD2d 335 [1st Dept 2000]).

Accordingly, it is

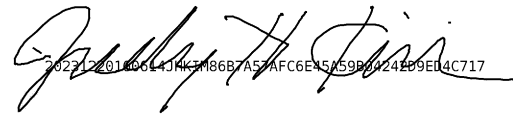
ORDERED that plaintiff Michele Chadrjian’s motion to disqualify counsel is denied as moot, in light of plaintiff’s withdrawal of same, and it is further

ORDERED that the cross-motion by defendants 1278-1284 First Avenue Realty LLC and Famous Famiglia Pizzeria for summary judgment dismissing plaintiff’s complaint and all cross-claims asserted against them is denied; and it is further

ORDERED that plaintiff shall, within ten days of the date of this decision and order, serve a copy of this decision and order, with notice of entry, upon defendants as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E filing" page on this court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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12/20/2023
DATE

HON. JUDY H. KIM, 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