

Morales v Sonia Realty Holding Corp.
2023 NY Slip Op 35224(U)
April 14, 2023
Supreme Court, Bronx County
Docket Number: Index No. 30360/2018E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
MARIA M. MORALES,

Plaintiff,

DECISION & ORDER

-against-

Index No.: 30360/2018E

SONIA REALTY HOLDING CORP.,

Motion Sequence No. 4

Defendant.
-----X

GUZMAN, J.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained on January 25, 2016, after she slipped and fell on snow and/or ice on the sidewalk in front of 4623 Park Avenue, Bronx, New York. Defendant Sonia Realty Holding Corp. owns the premises in question. Plaintiff alleges that snow and ice covered the entire sidewalk where she fell, and despite the fact that 29 hours had passed since the end of a storm, the sidewalk had not been cleared. In addition to common law negligence, Plaintiff contends that Defendant is liable pursuant to New York City Administrative Code §7-210. *See* NYSCEF Doc. No. 81.

On this motion, Plaintiff moves for summary judgment pursuant to CPLR §3212 as to Defendant's liability for the subject accident.

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). The parties' competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets its burden, the burden shifts to the nonmoving party to establish, through admissible evidence, the existence of disputed issues of material facts for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions that are not credible. Issue-finding, not issue-determination, is the role of the court on a motion for summary judgment. *Lebedev v. Blavatnik*, 193 A.D.3d 175, 142 N.Y.S.3d 511 (1st Dep't 2021). Nevertheless, if the moving party fails to sustain its burden, the court need not address the

adequacy of the opposing party's proof. *Licurgo-Cruz v. Ahmed*, 118 A.D.3d 420, 987 N.Y.S.2d 57 (1st Dep't 2014).

In support of her motion Plaintiff has submitted, *inter alia*, a copy of the relevant pleadings, deposition testimony of Plaintiff and Defendant; an affidavit from Howard Altshule and Jon Lombardo, certified consulting meteorologists, and a copy of relevant climatological data. *See* NYSCEF Doc. Nos. 76-93.

Plaintiff testified at her deposition that she was walking to work on January 25, 2016 at approximately 7:45 a.m.; it was cold; there had been a snow storm two days prior, on Saturday, January 23, 2016; she was wearing snow boots; the sidewalk had not been cleaned and was covered in snow and ice; as she stepped, both feet slipped and she fell backwards, causing her to land on her back and neck; she could not avoid the sidewalk because there were cars coming in the street; the ice had formed due to the prior snowstorm because she could see that the ice was thick and covered the entire sidewalk while she was walking; two days before her accident, there was a snowstorm where two feet of snow had fallen; she could see the snow wasn't plowed and the snow froze. *See* NYSCEF Doc. No 85 at 35-48.

In their affidavit, Altschule and Lombardo state that on January 23, 2016, there was light to moderate and heavy snow from 12 a.m. through 11:59 p.m. In total, approximately 27.6 inches of new snow/sleet accumulated on January 23, 2016. Periods of light snow continued to fall from 12 a.m. though 2:45 a.m. on January 24, 2016. Additionally, a "melting and refreezing process occurred on January 24, 2016, with new ice forming between approximately 5:45 p.m. and 7:46 p.m. on January 24, 2016. They further state that:

On January 25th, 2016 (day of the incident), Doppler radar images that were zoomed in over the incident location and nearby surface observations indicated that no precipitation fell.

At 7:45 a.m. on January 25th, 2016 (time and date of the incident), the sky was mostly sunny, the air temperature was 24 degrees Fahrenheit, and approximately 20.0" of preexisting snow/ice, and areas of old melt/refreeze ice, were present on exposed, untreated, and undisturbed surfaces. The last time new ice formed before the incident was approximately 7:46 p.m. on January 24th, 2016 (approximately 11 hours and 59 minutes prior to the time of the incident).

Melting and refreezing processes occurred on January 25th, 2016 (day of the incident). New ice formed between approximately 6:25 p.m. and 6:45 p.m., between approximately 7:10 p.m. and 7:35 p.m., and between approximately 7:42 p.m. and 9:42 p.m. on January [25th], 2016.

A property owner is liable for a slip-and-fall accident involving snow and ice on its property when the defendant either created the dangerous condition which caused the accident or had actual or constructive notice of its existence. *Cohen v. Woodlands Condo. Ass'n*, 186 A.D.3d 558, 126 N.Y.S.3d 668 (2d Dep't 2020). Administrative Code § 7-210, also provides, in relevant part, that every owner of real property has a duty to maintain any abutting sidewalk in a reasonably safe condition, and shall be liable for any injury to property or personal injury caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition, including the negligent failure to remove snow, ice, dirt or other material from the sidewalk.

“A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries.” *McBride v. City of New York*, 208 A.D.3d 578, 173 N.Y.S.3d 600 (2d Dep't 2022), citing *Tsyganash v. Auto Mall Fleet Mgt., Inc.*, 163 A.D.3d 1033, 1033–34, 83 N.Y.S.3d 74 (2d Dep't 2018).

Here, Plaintiff has established, prima facie, that Defendant breached its duty to maintain the sidewalk in a reasonably safe condition, and that Defendant had actual or constructive notice of the alleged hazardous condition. A defendant has constructive notice of a hazardous condition on property when the condition is visible and apparent, and has existed for a sufficient length of time to afford the defendant a reasonable opportunity to discover and remedy it. *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 501 N.Y.S.2d 646 (1986).

The meteorologists established that approximately 27.6 inches of new snow/sleet accumulated on January 23, 2016; periods of light snow continued to fall from 12 a.m. through 2:45 a.m. on January 24, 2016; and there was melting and refreezing on January 24, 2016, with no precipitation thereafter through the time of Plaintiff's accident. At her deposition, Plaintiff testified that the ice was thick, visible and apparent, and covered the entire sidewalk while she was walking. She further testified that she could see that the snow and ice had not been cleared from the snowstorm that two days' earlier. Thus, Plaintiff established that the condition of the

sidewalk was visible and had existed for a sufficient length of time for Defendant to have discovered and remedied it.

In opposition, Defendant also relies on the deposition testimony of Plaintiff and Defendant,¹ in addition to an affidavit from Emilio Garcia sworn to on January 27, 2023. In his affidavit, Garcia's states as follows:

I was hired by SONIA REALTY HOLDING CORP., to clean the snow and ice from the sidewalk in front of 4623 Park Avenue, Bronx, N.Y. for approximately 1 year before the January 25, 2016 incident date. I do not remember the condition of the sidewalk in the morning of January 25, 2016, however it is my custom and practice to clear the snow and ice from the sidewalk before the snow storm starts, while it is progressing and after the snow storm stops.

My procedure for cleaning the snow and ice when a snow storm is predicted is that salt is placed on the sidewalk in front of 4623 Park Avenue, then I shovel the snow while the snow storm is progressing, and when the snow storm stops, I clear the sidewalk of snow and ice and place salt to melt the ice. This is the same procedure I followed before and after the snow storm that began on January 23rd, 2016.

See NYSCEF Doc. No. 104

Nevertheless, this affidavit--executed seven years after Plaintiff's accident--fails to reflect his personal knowledge as to the adequacy of any snow removal efforts actually undertaken prior to plaintiff's fall, his knowledge of the condition of the sidewalk on the date of Plaintiff's alleged accident, or when the sidewalk had last been inspected. See *Santiago v. Weisheng Enterprises LLC*, 134 A.D.3d 570, 571, 22 N.Y.S.3d 417, 417 (1st Dep't 2015). "Mere reference to general cleaning practices, with no evidence regarding any specific cleaning or inspection of the area in question, is insufficient to establish a lack of constructive notice." *Herman v. Lifeplex, LLC*, 106 A.D.3d 1050, 1051, 966 N.Y.S.2d 473 (2d Dep't 2013). Thus, the Court finds that Garcia's affidavit is insufficient to create a material issue of fact in opposition to Plaintiff's prima facie showing.

¹ The sole shareholder of Defendant Sonia Realty Holding Corp., Chanardath Balam, testified on behalf of the Defendant. Balam testified that he had no independent knowledge or recollection of January 25, 2016, or any snowfall around that time, or the condition of the sidewalk abutting his property prior to the date of Plaintiff's alleged accident.

The Court has considered the remaining contentions raised by Defendant and finds them to lack merit. The affidavit of Plaintiff's meteorologists and accompanying climatological data reflect that there was no snow or rain on the day of the accident, that there were only trace amounts of precipitation on the day prior, but that it snowed heavily on January 23, 2016. No evidence has been submitted to the contrary. *See, e.g., Kasem v Price-Rite Office and Home Furniture*, 21 A.D.3d 799, 800 N.Y.S.2d 713 (1st Dept 2005) (question of fact raised where climatological data submitted by plaintiff contradicted that submitted by defendant and revealed the existence of conditions that were conducive to the melting of snow and the formation of ice upon refreezing). Additionally, it is well-established that a plaintiff is not required to demonstrate the absence of any comparative fault in order to obtain partial summary judgment on the issue of liability. *Rodriguez v. The City of New York*, 31 N.Y.3d 312, 76 N.Y.S. 312 (2018). Accordingly, it is hereby:

ORDERED AND ADJUDGED that Plaintiff's motion for partial summary judgment on the issue of liability is GRANTED; and it is further

ORDERED AND ADJUDGED that the Clerk of Court shall enter judgment accordingly; and it is further

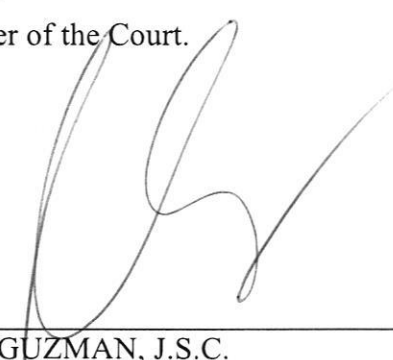
ORDERED AND ADJUDGED that this matter shall proceed to trial on the issue of damages only; and it is further

ORDERED AND ADJUDGED that Plaintiff shall serve a copy of this Decision & Order with Notice of Entry upon Defendant within thirty days of the date of this Decision & Order.

The foregoing constitutes the Decision & Order of the Court.

Dated: Bronx, New York

April 14, 2023



HON. WILMA GUZMAN, J.S.C.