

Llanos v 2940 & 2950 White Plains Rd., LLC
2024 NY Slip Op 35317(U)
January 4, 2024
Supreme Court, Bronx County
Docket Number: Index No. 809983/2021E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
RICARDO LLANOS,

Plaintiff,

DECISION & ORDER

-against-

Index No.: 809983/2021E

2940 & 2950 WHITE PLAINS ROAD, LLC,

Motion Sequence No. 3

Defendant.
-----X

GUZMAN, J.

Plaintiff commenced this action to recover damages for personal injuries he allegedly sustained on December 19, 2020, as the result of a slip and fall accident on the sidewalk adjacent to premises located at 2950 White Plains Road, Bronx, New York. Plaintiff alleges that 2940 & 2950 White Plains Road LLC ("Defendant"), the owner of the premises, was negligent in failing to adequately remove snow and ice that had accumulated on the sidewalk after a snowstorm that had occurred several days prior, on December 16-17, 2020. At his deposition, Plaintiff testified that he was on his way to the bank with his fiancée at approximately 7:30 p.m. when he slipped and fell. Plaintiff's fiancée took pictures of the location, which were used at Plaintiff's deposition. *See* NYSCEF Docs. 55-56.

On this motion, Plaintiff moves for partial summary judgment on the issue of Defendant's liability for the subject accident pursuant to CPLR § 3212. It is well-settled that "[t]he proponent of summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316 (1985). Because summary judgment is a "drastic remedy," it should only be employed "when there is *no doubt* as to the absence of triable issues." *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131 (1974) (emphasis added). 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). The court must view the evidence in the light most favorable to the non-moving party, and give the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503, 942 N.Y.S.2d 13 (2012). If the moving party fails to meet this initial burden, summary judgment must be denied "regardless of the sufficiency of the opposing papers." *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503, 942 N.Y.S.2d 13

(2012)(internal quotation marks, citation and emphasis omitted).

Negligence is the failure to use reasonable care. “A defendant stands liable in negligence only for breach of a duty of care owed to the plaintiff.” *Sanchez v. State*, 99 N.Y.2d 247, 754 N.Y.S.2d 621 (2002). Under general principles of negligence, a defendant property owner has a duty to maintain its premise in a reasonably safe condition in view of all of the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoidant risk. This duty extends to conditions involving snow and ice. See Administrative Code § 7-210 (imposing a nondelegable duty on certain real property owners to maintain city sidewalks abutting their land in a reasonably safe condition, including removing snow and ice from the sidewalks); *Xiang Fu He v Troon Mgt., Inc.*, 34 N.Y.3d 167, 114 N.Y.S.3d 14 (2019). “A property owner will be held liable for a slip-and-fall accident involving snow and ice on its property only when it created the dangerous condition which caused the accident or had actual or constructive notice of its existence.” *Cuillo v. Fairfield Prop. Servs., L.P.*, 112 A.D.3d 777, 977 N.Y.S.2d 353 (2d Dep’t 2013). 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, 837-838,

In support his motion, Plaintiff has submitted, *inter alia*, copies of the relevant pleadings, Plaintiff’s deposition transcript and photographs marked as exhibits A-G; the deposition transcript of Marilyn Rubell, the sole member of the Defendant; and certified climatological records from LaGuardia Airport for the month of December, 2020. See NYSCEF Docs. 51-58. The Court notes that some of the photographs show a large accumulation of snow on the ground, and a snowy pathway adjacent to the street. The sidewalk itself is not visible under the snow. The climatological records further demonstrate that from December 16, 2020, at approximately 5:00 p.m. until December 17, 2020, at 12:00 p.m., New York City experienced snow accumulation of approximately 10.2 inches over the course of two days, and the temperature remained at or below freezing on the days following the storm until Plaintiff’s accident. After the cessation of the snowstorm, it did not snow again until December 20, 2020.

Here, the photographs, coupled with the climatological data and Plaintiff’s testimony establish, *prima facie*, that the snowy/icy condition that caused him to slip was the product of residual snow from the storm two days’ earlier. Plaintiff’s proof establishes that the snowy condition of the sidewalk was visible and apparent, and had formed a sufficient period of time before the accident for the defendant to have discovered and remedied the condition. Cf. *McBride v. City of New York*, 208 A.D.3d 578, 173 N.Y.S.3d 600 (2d Dep’t 2022) (plaintiff failed to demonstrate, *prima*

facie, that the icy condition that caused him to slip was longstanding and the product of residual snow that the defendant left behind after negligently plowing the sidewalk; although snow fell three days prior to the accident, the temperatures rose above freezing in the intervening time). At her deposition, Marilyn Rubell testified that the person employed to clean the sidewalk would “try as best as he could if it’s not a very strong storm” but in cases of a very strong storm, “he’ll put down ice melt until he’s able to go in there and make a path and shovel the snow to make a path” but did not recall any specifics about the December 2020 snowstorm. *See* NYSCEF Doc. 57.

In opposition, Defendant contends that the condition of the sidewalk was open and obvious. Although property owners have a duty to maintain their property in a reasonably safe condition, and to warn of latent hazards of which they are aware, they have no duty to protect or warn where the alleged condition is both open and obvious and not inherently dangerous. *See Lazar v. Burger Heaven*, 88 A.D.3d 591, 931 N.Y.S.2d 296 (1st Dep’t 2011). Nevertheless, even where a defendant establishes that the snowy condition of the sidewalk is not inherently dangerous, an open and obvious condition only relieves a property owner of its duty to warn, and not the duty to ensure that the premises is maintained in a reasonably safe condition. *Martinez v. Contreras*, 216 A.D.3d 532, 189 N.Y.S.3d 482 (1st Dep’t 2023).

In any event, Defendant has not established that the presence of snow and/or ice on the sidewalk, as reflected in the photographs, was not inherently dangerous. Additionally, Defendant has failed to provide any proof of when the sidewalk was last shoveled or treated prior to Plaintiff’s accident. The fact that over ten inches of snow fell approximately two days prior to Plaintiff’s accident does not constitute a triable issue of fact. New York City Administrative Code § 16-123 requires property owners to clear “snow or ice, dirt, or other material” from abutting sidewalks and gutters within four hours of snow fall, but exempts property owners from clearing the conditions between 9:00 p.m. and 7:00 a.m. Defendant therefore had a duty to clear the sidewalk prior to Plaintiff’s accident. Defendant also relies on Administrative Code Section 16-123 (b), which provides that if snow and ice on the sidewalk is “frozen so hard” that it cannot be removed without damaging the pavement, the owner may apply sand and “as soon thereafter as the weather shall permit, thoroughly clean such sidewalks. However, Defendant has not submitted any facts in support of its argument, nor any proof of any snow or ice remediation efforts it undertook on the date of the accident.

Finally, contrary to Defendant’s argument, Plaintiff’s deposition transcript is admissible. A party to an action does not need to comply with the formalities of CPLR § 3116 (a) in order to use its own deposition transcript in support of its own summary judgment motion, since, by submitting the

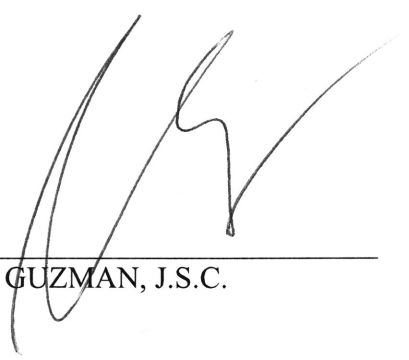
transcript in support of the motion, it accepts the accuracy of the transcript. *Nyambuu v. Whole Foods Mkt. Group*, 191 A.D.3d 580, 143 N.Y.S.3d 14 (1st Dep't 2021). Accordingly, it is hereby:

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 this matter shall proceed to a trial on damages upon filing of the Note of Issue and payment of any required fees; and it is further

ORDERED AND ADJUDGED that Plaintiff shall serve a copy of this Decision & Order with notice of entry within thirty days of Entry of this Decision & Order.

Dated: Bronx, New York
January 4, 2024



HON. WILMA GUZMAN, J.S.C.