Medina v City of New York
2025 NY Slip Op 34124(U)
October 23, 2025
Supreme Court, New York County
Docket Number: Index No. 154370/2016
Judge: Carol Sharpe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL SHARPE **PART** **52M**

Justice

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DAISY MEDINA, Plaintiff,	**INDEX NO.** 154370/2016
	MOTION DATE 07/09/2024, 07/01/2024
- v -	**MOTION SEQ. NO.** 001 002
THE CITY OF NEW YORK, KENBAR MANAGEMENT LLC,1500 LEXINGTON ASSOCIATES LLC Defendant.	**DECISION + ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 58, 59, 60, 61, 62, 63, 71

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 54, 56, 64, 65, 66, 67, 68, 69, 70, 72, 73

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, Motion Sequences 1 and 2 are decided as follows:

Defendants 1500 Lexington Associates, LLC and Kenbar Management, LLC (collectively "Lexington and Kenbar") (Motion Seq. 1), and The City of New York ("The City"), (Motion Seq. 2), each filed a motion seeking an order granting summary judgment pursuant to CPLR 3212. Written opposition was filed. Both motions are granted.

Plaintiff commenced this personal injury action on May 23, 2016, by filing a summons and complaint seeking damages for the injuries she sustained on March 6, 2015, when she slipped and fell on an accumulation of snow and ice on the roadway near 1500 Lexington Avenue, New York County. Issued was joined by the filing of answers by The City on June 13, 2016, and by Lexington and Kenbar on August 30, 2016.

Lexington and Kenbar seek dismissal of the complaint and all crossclaims against them on the grounds that they did not have a duty to plaintiff as the accident did not occur on a sidewalk abutting their property, and they did not create the condition that caused plaintiff's injuries, therefore, Administrative Code of the City of New York §7-210 ("Admin Code §7-210") is inapplicable. In support of their motion, Lexington and Kenbar submitted, among other things, photographs; the examination before trial (EBT) transcript of plaintiff; the EBT transcript of Christian Ellison, a Sanitation Supervisor with the Department of Sanitation; and the EBT transcript of Cornelius Sigety, the now retired Managing Director of Kenbar Management, LLC and 1500 Lexington Associates, LLC.

In opposition to Lexington and Kenbar's motion, plaintiff contends that because Mr. Sigety did not know how the management company plowed and maintained the sidewalk abutting Lexington and Kenbar's property during snowstorms, a triable issue of fact exists as to whether they created the dangerous condition in the crosswalk and therefore owed a duty to the plaintiff. Plaintiff submitted, among other things, an affirmation of Stacy-Ann Gooden, a broadcast meteorologist and weather consultant, along with a local climatological data report of hourly observations from March 2015.

The City seeks dismissal of the complaint and crossclaims on the grounds that under the "storm in progress" doctrine they did not have actual or constructive notice of the subject condition that plaintiff alleges caused her injuries, and that they did not have reasonable time to remedy the condition before plaintiff's accident. In support of its motion, The City submitted, among other things, the transcript of plaintiff's 50-h hearing dated August 3, 2015; the sanitation records in response to the Case Scheduling Order ("CSO"); the climatological dataset; and certified weather report.

In opposition to The City's summary judgment motion, using the same supporting documents, plaintiff contends that The City failed to meet its *prima facie* burden for summary judgment because it has not produced evidence of its maintenance activities, and more specifically that the dangerous condition cited by plaintiff did not exist when the area was last cleaned or inspected prior to plaintiff's fall. Additionally, plaintiff contends that the storm in progress doctrine is inapplicable to the facts in this case as the snowfall concluded at approximately 6:00pm on March 5, 2025, approximately 21½ hours prior to plaintiff's accident. Plaintiff further contends that there is a battle of experts which would preclude summary judgment.

Plaintiff testified at her EBT that:

> Q: Did the accident occur on the sidewalk, on the curb, the roadway or something else?
> A: It was on – it was on the walkway, I wasn't on the sidewalk. I was crossing the street.
> Q: When you say you were crossing the street, had you already entered the street when the accident happened?
> A: Yes.
> Q: Was this in a crosswalk?
> A: Yes.
> Q: When your incident happened, where were your feet?
> A: I was on the crosswalk.
> Q: Were both feet in the crosswalk in the street.
> A: Yes. I put one foot down and the other followed.

(NYSCEF Doc. 49, Pages 26-27, Lines 19-25 & 1-8).

The City's witness, Christian Ellison who is employed by the Sanitation Department of New York ("SDNY"), testified that the sanitation records showed that on March 5, 2015, sanitation workers were plowing the snow. A review of the records shows that on March 5, 2015, the sanitation workers on the shifts from 0700 to 1900 hours, and 1900 to 0700 hours, were plowing the snow, and that on March 6, 2015, sanitation workers starting on the 0700 hours shift continued

plowing and cleaning. The records further reveal that the sanitation workers had been spreading salt since March 3, 2015, and clearing snow since March 4, 2015.

Ms. Gooden stated in her report that, "[t]he National Weather Service in Upton, NY issued a winter storm warning which was replaced with a winter weather advisory for the area until 7pm, March 5 [2015,] (the day before the incident). Although the advisory expired prior to March 6, [2015] there was enough snow and ice on untreated surfaces that posed a hazard." (NYSCEF Doc. # 66, ¶ 21). Her report noted the measurements at Central Park, the closest official weather station to the accident site, LaGuardia Airport, and John F. Kennedy Airport. She reported that, "[o]n March 5, 2015, a high of 40° and a low of 19° were reported at Central Park. Another winter storm brought 7.5" of snow to the area where there was already 13" of snow on the ground. There was also a reported .76 of liquid precipitation that fell." (*id.* at ¶ 27). Ms. Gooden further reports that, "[o]n March 6, 2015, the maximum air temperature was 27 degrees fahrenheit and the minimum temperature was 12 degrees fahrenheit at Central Park, which was the closest official weather station (approximately .4 miles west of the incident location). The temperature remained well below freezing the entire day." (*id.* at ¶ 22).

Ms. Gooden, upon her review of the climatological data from March 1, 2015, through March 6, 2015, ultimately concluded within a reasonable degree of scientific and meteorological certainty, that "[m]ultiple winter storm systems caused snow, rain, and freezing rain to fall prior to March 6, 2015. At the time of the incident at 3:30pm, it was reported by the National Weather Service that these storms left 19" of snow on the ground. It was a bright and sunny day. However, because of the freezing temperature, ice formation likely led to treacherous conditions." (*id.* at ¶ 46).

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." (*Dallas-Stephenson v Waisman,* 39 AD3d 303, 306, 833 NYS2d 89 [1st Dept 2007], *citing Winegrad v New York Univ. Med. Center,* 64 NY2d 851, 853, 487 NYS2d 316, 476 NE2d 642 [1985]). "Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." (*Alvarez v Prospect Hosp.,* 68 NY2d 320, 324, 501 NE2d 572, 508 NYS2d 923 [1986]). If the proponent makes the required *prima facie* showing, the burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial. CPLR 3212(b); (*Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124, 733 NE2d 203, 711 NYS2d 131 [2000]).

"It is well established that summary judgment may not be granted whenever the pleadings raise clear, well-defined and genuine issues" (*Falk v Goodman*, 7 NY2d 87, 89, 163 NE2d 871, 195 NYS2d 645 [1959]). Upon a motion for summary judgment, the role of the court is issue finding, not issue determination (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 965 NE2d 240, 942 NYS2d 13 [2012]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, 144 NE2d 387, 165 NYS2d 498 [1957]; *Esteve v Abad*, 271 AD 725, 727, 68 NYS2d 322 [1st Dept 1947]). The motion should be denied where different conclusions can reasonably be drawn from the evidence (*Sommer v Federal Signal Corp.*, 79 NY2d 540, 593 NE2d 1365, 583 NYS2d 957 [1992]). All of the evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party's favor (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563, 897 NYS2d 12 [1st Dept 2010]). Issues of credibility are to be resolved at trial, not by summary judgment (*Castillo v New York City Tr. Auth.*, 69 AD3d 487, 891 NYS2d 645 [1st Dept 2010]). For a summary judgment motion to be denied, the non-moving party

must provide evidence showing that triable issues of fact exist. "To defeat summary judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions, of fact or of law, are insufficient" (*Mallad Constr. Corp. v Cty. Fed. Sav. & Loan Ass'n,* 32 NY2d 285, 260, 344 NYS2d 925, 929, 298 NE2d 96 [1973]; *Freedman v Chem. Constr. Corp.*, 43 NY2d 260, 264, 401 NYS2d 176, 179, 372 NE2d 12,14 [1977])("[I]t is elementary that conclusory assertions will not defeat summary judgment. The opponent of a properly made summary judgment motion must present evidentiary facts sufficient to raise a triable issue of fact…"). If there are no material triable issues of fact, summary judgment must be granted (*see Sillman,* 3 NY2d at 404).

Pursuant to Admin Code §7-210, a property owner has a duty to keep the sidewalk abutting its property in a reasonably safe condition, including being free of snow and ice. Here, plaintiff clearly testified that she fell in the crosswalk and not on the sidewalk abutting Lexington and Kenbar's real property, therefore Lexington and Kenbar are not liable. Plaintiff's argument that Lexington and Kenbar may have made the area worse by negligently removing the snow is speculative (*see Werner v Jag 1st Ave Realty LLC*, 223 AD3d 603, 202 NYS3d 122 [1st Dept 2024]).

"A property owner 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"(*Solazzo v NY City Tr. Auth.*, 6 NY3d 734, 735, 843 NE 2d 748, 810 NYS 2d 121 [2005]; *Sherman v NY State Thruway Auth.*, 27 NY3d 1019, 52 NE 3d 231, 32 NYS 3d 568 [2016]). The "storm in progress" defense permits the municipality to commence the clean up within a reasonable period time after the cessation of precipitation. (*Powell v MLG Hillside Assoc., L.P.*, 290 AD2d 345, 737 NYS3d 27 [1st Dept 2002]). "A reasonable time is that period within which

the municipality should have taken notice of the icy condition and, in the exercise of reasonable care, remedied it by clearing the sidewalk or otherwise eliminating the danger." (*Valentine v City of New York,* 86 AD2d 381, 383, 44 NYS 2d 991[1st Dept 1982], *affd* 57 NY2d 932 [1982]). "In cases of exceptionally severe snow storms the courts, recognizing the difficulties involved, have consistently allowed the city a considerable length of time to clear the sidewalk of snow and ice" (*id*, at 385). "[T]he interval of some 30 hours between the storm's cessation and plaintiff's fall was insufficient, as a matter of law, to charge the city with the duty of clearing the sidewalk where plaintiff fell" (*id*, at 384) (*see Rusin v City of NY*, 133 AD3d 648, 19 NYS 3d 84 [2d Dept 2015] [holding that 57 hours after the accumulation of 20 inches of snow, and with temperatures that rose and fell below freezing, was insufficient to time to clear the snow]).

This Court finds that there is no evidence that The City created, or exacerbated the condition, and that 21 ½ hours was not a sufficiently reasonable period within which The City could have taken notice and remedied the snow and ice condition, given the 7.5 inches that fell from March 4 to March 5, 2015, which added to prior snowfall as detailed by plaintiff's expert. The record showed that DSNY was out plowing and clearing the snow throughout the day and night on March 5 and 6, 2025, and it is reasonable that they had not gotten to clean the crosswalk where plaintiff fell within that period. Accordingly, it is hereby:

ORDERED, that the summary judgment motion filed by Lexington and Kenbar is granted in its entirety; it is further

ORDERED, that the summary judgment motion filed by The City is granted in its entirety; it is further

ORDERED, that the complaint and all crossclaims are dismissed against Lexington and Kenbar with prejudice; it is further

ORDERED, that the complaint and all crossclaims are dismissed against The City with prejudice; it is further

ORDERED, that, this action is discontinued with prejudice; and it is further

ORDERED, that Lexington and Kenbar shall serve a copy of this Decision and Order with Notice of Entry upon all parties within fifteen (15) days of the date herein and file proof of said service.

This constitutes the Decision and Order of the Court.

ENTER:

October 23, 2025
DATE

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE