Philbert v Spira
2026 NY Slip Op 31668(U)
March 26, 2026
Supreme Court, Kings County
Docket Number: Index No. 521880/2023
Judge: Katherine A. Levine
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 92

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EMLYN PHILBERT,

Plaintiff,

– against –

STEVEN S. SPIRA, ADOR HOUSING AND DEVELOPMENT LLC., and MENUCHA REALTY CORP.,

Defendants,

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STEVEN S. SPIRA and ADOR HOUSING AND DEVELOPMENT LLC,

Third-Party Plaintiffs,

– against –

MENUCHA REALTY CORP.,

Third-Party Defendant.

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Index No. 521880/2023

DECISION/ORDER
Hon. Katherine A. Levine

Mot. Seq. 1, 2, 3

The following e-filed papers read herein: **NYSCEF Doc. Nos.**

(Motion Sequences 1 and 2 filed under Index No. 521880/2023)

Notice of Motion and Affidavits (Affirmations) Annexed.....	7-22, 35-53
Opposing Affidavit (Affirmations).....	55-82, 83-92
Reply Affidavits (Affirmations).....	93-95, 96-98, 106-110

(Motion Sequence 3 filed under Index No. 507263/2021 pre-consolidation)

Notice of Motion and Affidavits (Affirmations) Annexed.....	51-65
Opposing Affidavit (Affirmations).....	N/A
Reply Affidavits (Affirmations).....	N/A

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from plaintiff EMLYN PHILBERT's ("Ms. Philbert's" or "plaintiff's") slip and fall allegedly on a portion of sidewalk in front of, and directly on the property line between, two adjoining and attached premises, 1231 43rd Street, Brooklyn, NY 11219 ("1231 43rd Street"),

owned by defendant MENUCHA REALTY CORP. ("Menucha"), and 1235 43rd Street, Brooklyn, NY 11219 ("1235 43rd Street"), owned by co-defendants defendants STEVEN S. SPIRA ("Mr. Spira") and ADOR HOUSING AND DEVELOPMENT LLC ("Ador Housing"). Plaintiff originally sued only Mr. Spira and Ador Housing as owners of 1235 43rd Street under Index No. 507263/2021, and after instituting the instant separate action against Menucha as owner of 1231 43rd Street under Index No. 521880/2023, this court granted consolidation of the two actions, as well as a third-party action brought by Mr. Spira and Ador Housing against Menucha, under this index number. Before the court are three motions, including two motions filed under this Index Number and another motion filed under the now-closed prior Index Number, seeking an order granting summary judgment dismissing both the original complaint and the third-party complaint.

At the end of oral argument on May 21, 2025, at which time the court denied summary judgment in favor of all defendants to the extent there existed an issue of fact as to the actual location of plaintiff's accident, the court directed the parties to submit supplemental briefing on the relevance and applicability of the "storm in progress" doctrine, which the defendants argued shielded both properties from liability due to an ongoing snow storm which allegedly continued throughout the day of the accident and which may have relieved defendants of their duty to keep the sidewalk in front of the subject properties safe. Now, upon review of the supplemental briefing, the court resolves the remainder of the motions for summary judgment. For the reasons that follow, the remaining branches of Motion Sequences 1, 2 and 3 are denied.

DISCUSSION

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. N.Y. State Thruway Auth.*, 27 N.Y.3d 1019, 1020-1021 (2016). This common law "storm in progress" doctrine protects landowners from liability "until an adequate period of time has passed following the cessation of the storm to allow the owner an opportunity to ameliorate the hazards caused by the storm." *Ryan v. Beacon Hill Estates Coop., Inc.*, 170 A.D.3d 1215, 1216 (2d Dep't 2019). In New York City, a property owner's duty to remediate icy conditions on a sidewalk abutting their property following a storm is formalized at NYC Administrative Code 16-123, which states that "owners of abutting properties have four hours from the time the

precipitation ceases, excluding the hours between 9:00 p.m. and 7:00 a.m., to clear ice and snow from the sidewalk." *Zambrano v. City of N.Y.*, 187 A.D.3d 1245, 1246 (2d Dep't 2020). However, even during an ongoing storm, once a landowner or a tenant in possession elects to engage in snow removal, it is required to act with "reasonable care so as to avoid creating a hazardous condition or exacerbating a natural hazard created by the storm." *Fernandez v. City of N.Y.*, 125 A.D.3d 800, 801 (2d Dep't 2015).

Where the record reflects that such voluntary snow removal efforts were undertaken, and the pleadings allege that such efforts were performed in a negligent manner, (*Laris v. City of N.Y.*, 236 A.D.3d 639, 640 [2d Dep't 2025]), "[a] defendant property owner moving for summary judgment [...] has the burden of establishing, prima facie, that it neither created the snow or ice condition that allegedly caused the plaintiff to fall nor had actual or constructive notice of that condition," (*Braxton v. Brown*, 226 A.D.3d 954, 954 [2d Dep't 2024]). It is firmly the moving defendant's burden to "make a prima facie showing that the snow removal efforts it undertook did not create or exacerbate the hazardous condition upon which the plaintiff allegedly fell." *Cotter v. Brookhaven Mem. Hosp. Med. Ctr., Inc.*, 97 A.D.3d 524, 525 (2d Dep't 2012).

ANALYSIS

Here, the defendants have failed to demonstrate their prima facie entitlement to summary judgment dismissing the complaint based on the "storm in progress" doctrine. Specifically, defendants have not established prima facie evidence that tenant/superintendent for 1235 43rd Street Barbara Lauer's alleged efforts to remove snow and ice from the sidewalk did not create a hazardous condition or exacerbate the natural hazard created by the storm. Lauer's testimony itself creates issues of fact as to her credibility; specifically she states that she shoveled a 2-3 foot-wide path down the sidewalk next to 1235 43rd Street, and that she salted the path afterwards. She testified that she did this during the afternoon of the day of the accident, but also that she shoveled the snow before the accident happened. Plaintiff's contemporaneous photos from her fall show that at least some part of the sidewalk either in front of one or in between both addresses was in fact piled high with snow. The documentary evidence and the testimony, taken together, cannot reconcile why the snow was piled up when Lauer testified that she had just shoveled it all out of the way, where the snow in the photo was, whether she shoveled before or after the accident, and the degree to which she had, in fact, shoveled sufficiently.

CONCLUSION

For these reasons, the remainder of the pending motions for summary judgment seeking both dismissal of the underlying action as well as dismissal of the third-party action are denied, and the case shall proceed to trial.

Dated: March 26, 2026

KAL HON. KATHERINE A. LEVINE
Hon. Katherine A. Levine, J.S.C.