Baldigo v Dewitt Community Ctr.
2016 NY Slip Op 33123(U)
June 2, 2016
Supreme Court, Onondaga County
Docket Number: 2014EF1535
Judge: Hugh A. Gilbert

At a Term of Supreme Court held in and for the County of Onondaga, in the City of Watertown, New York on the 5th day of April, 2016.

PRESENT: HONORABLE HUGH A. GILBERT
Supreme Court Justice

STATE OF NEW YORK

SUPREME COURT COUNTY OF ONONDAGA

JEFFREY BALDIGO,

Plaintiff,

-vs-

THE DEWITT COMMUNITY CENTER,
THE TOWN OF DEWITT and
THE VILLAGE OF EAST SYRACUSE,

Defendants.

MEMORANDUM
DECISION AND ORDER

Index No. 2014EF1535
RJI No. 33-15-0357

This action stems from an accident that took place in the evening of February 5, 2013 in the Village of East Syracuse. Plaintiff Jeffrey Baldigo claims that he slipped and fell on a patch of black ice in the parking lot of the Dewitt Community Center, resulting in personal injuries. The action was dismissed against Defendants, The Dewitt Community Center and the Town of Dewitt.

Defendant Village of East Syracuse ("Village") has moved this Court for an Order pursuant to CPLR §3212 dismissing the Plaintiff's Complaint in its

entirety. It contends that no questions of fact exist as to the issue of actual or constructive notice of the condition giving rise to the fall, nor is there any evidence to suggest that it created the condition. Plaintiff has opposed the motion. He does not dispute the lack of actual notice so we will not address that aspect of a premises case.

Plaintiff provided testimony at a 50-h hearing and a deposition and supplied the Court with a sworn Affidavit. On the evening of February 5, 2013, Plaintiff parked his vehicle in the last parking space in the northeast corner of the Center parking lot. It was a clear night with no snow falling and the area was illuminated by lighting in the center of the parking lot. He got out of his vehicle and walked to the back of his vehicle. He was looking at the ground and testified that it appeared to be "clear". Plaintiff then fell on what he described as "black ice". He had no idea how long it was there and testified that it blended into the pavement. Another patron, Ryan Grabiec came to his assistance and also slipped on the ice.

The parties deposed four Village employees, Ronald Russell, III, Brandon Russell, Robert Chamberlain and Andrew Eaton. The Village provides maintenance of the Center's parking lot because the Village's Fire Department is located there. It provided the Court with a log of the salting in the days leading up to Plaintiff's accident. There had been a major snow event on February 2, 2013 and

none again until February 8, 2013. The log indicates that the employees did a "full route" of the parking lot twice on February 4, 2013 and once on February 5, 2013 which means salting. Mr. Russell testified that it was not plowed on February 4, 2013 but it was plowed between 7:00 a.m. and 3:30 p.m. on February 5, 2013. Mr. Chamberlain salted the lot on February 5, 2013 either before 7:00 a.m. or after 3:30 p.m. because the log indicated he was paid overtime. Despite Plaintiff's contentions, there was no set policy in writing or otherwise, which dictated the order of salting or plowing. The officer who reported to the scene prepared an incident report which indicated that the parking lot was "visibly clear of ice and had a large amount of road salt on it."

"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 vs. Fairfield Prop. Services, L.P.,*** 112 AD3d 777 (2013). We find that Defendant established its entitlement to summary judgment by demonstrating, prima facie, that it did not create the black ice condition or have actual or constructive notice of it. ***Cantwell vs. Fox Hill Community Assn., Inc.,*** 87 AD3d 1106 (2011). Again there is no evidence in the record that Defendant had actual notice of the condition as there is no testimony that anyone complained about it at any time prior to the accident.

With respect to constructive notice, there is no evidence in this record as to how long the black ice was in existence prior to the Plaintiff's accident. According to the records before the Court, less than one inch of snow fell on February 5, 2013. Defendant's employees salted and plowed the parking lot. Plaintiff himself did not see the ice until after he fell. Therefore, the suggestion that Defendant had constructive notice of the condition or had time to remedy it is speculative. ***Murphy vs. 136 Northern Boulevard Associates,*** 304 AD2d 540 (2003). A general awareness that an icy condition may exist is not sufficient, without move, to constitute notice of a particular condition. ***Stoddard vs. G.E. Plastics Corporation,*** 11 AD3d 200 863 (2004).

Any finding as to when this patch of black ice developed would be speculative as would a finding that it existed for a sufficient amount of time to provide notice and/or a reasonable amount of time to remedy it. ***DeVivo vs. Sparago,*** 287 AD2d 535 (2001); ***Penny vs. Pembrook Management Inc.,*** 280 AD2d 590 (2001). Moreover, "proof of regular inspections and maintenance of the area in question–including an inspection and any remedial action just prior to the incident–is ordinarily sufficient to satisfy a Defendant's burden of showing no notice of a dangerous condition." ***Hagin vs. Sears, Roebuck and Company,*** 61 AD3d 1264, 1266 (2009). Defendant's employees were on the premises plowing and salting on the day in question. Plaintiff has failed to present competent evidence

establishing that Defendant knew or should have known of the condition which caused Plaintiff's fall.

Plaintiff's primary contention appears to be that Defendant caused or created the condition which caused his fall. He suggests that snow was plowed and piled in the area adjacent to the parking spaces such that it was foreseeable that the snow would melt, water would run into the parking lot and freeze, forming ice.

We note that Plaintiff furnished the climatological records in support of his assertion that, because of the weather patterns over the course of several days, Defendant knew or should have known that piled snow was melting and refreezing causing black ice to form. Unlike ***Moriarity vs. Wallace Development Company,*** 61 AD3d 1088 (2009) cited by Plaintiff, Mr. Baldigo did not supply the Court with an Affidavit from an expert to support his assertions. We also note that Plaintiff in ***Moriarity*** supplied an architect's Affidavit in addition to that of a meteorologist. Here Plaintiff fails to raise a question of fact as to the effect of weather conditions with the Affidavit of only his attorney.

In short, Plaintiff's contention that the Village caused or created black ice through its method of snow removal is based upon speculation, which cannot defeat summary judgment. ***Crosthwaite vs. Acadia Realty Trust,*** 62 AD3d 823

(2009). Plaintiff's attorney's unsubstantiated theory does not qualify as evidence that Defendant caused or created the ice located by Plaintiff's vehicle. The suggestion "that a snow pile created by the Village's snow plowing efforts in the days before the accident had melted, and that the melted water refroze, was speculative and insufficient to raise a triable issue of fact." ***Lima vs. Village of Garden City,*** 131 AD3d 947, 948 (2015). The same is true for any suggestion that the Village failed to properly salt or otherwise treat the surface of the parking lot on the day of this accident.

THEREFORE, it is

ORDERED, ADJUDGED AND DECREED that Defendant's motion is granted and the Plaintiff's Complaint is dismissed.

Dated: June 2, 2016
at Watertown, New York

ENTER

HUGH A. GILBERT
Supreme Court Justice