At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 29th day of MAY 2020.

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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ROSA ANGELES,

Plaintiff,

-against-

LUTHERAN MEDICAL CENTER,

Defendants.

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Index No.: 509716/2018

Decision and Order

The following *papers* numbered 34 to 54 read on this motion:

Papers	Numbered
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	34-48
Opposing Affidavits (Affirmations)	49-51
Reply Affidavits (Affirmations)	52-54

After oral argument and a review of the submissions herein, the Court finds as Follows:

Defendants, LUTHERAN MEDICAL CENTER, (hereinafter "Defendants"), move pursuant to C.P.L.R. §3212, for an Order granting Defendants summary judgment and dismissing the Complaint of the Plaintiff because they did not create or have notice of any dangerous or defective condition. Plaintiff opposes the same.

ARGUMENTS

Defendant argues that they did not create or have prior notice of any dangerous or defective condition.

Plaintiff argues among other things issues of fact exist and the raised sidewalk flag was not a a *de minimis* non-actionable trivial defect. Plaintiff also argues the defendants failed to meet their burden.

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trail of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR §3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.*

Section 7–210, which became effective September 14, 2003, shifted tort liability from the City to the commercial property owner for personal injuries proximately caused

by the owner's failure to maintain the sidewalk abutting its premises in a reasonably safe condition (*see Vucetovic v. Epsom Downs, Inc.*, 10 NY3d 517, 521, 860 NYS2d 429, 890 NE2d 191; *Fusco v. City of New York*, 71 AD3d 1083, 1084, 900 NYS2d 81; *Grier v. 35–63 Realty, Inc.*, 70 AD3d 772, 773, 895 NYS2d 149). "[T]he language of section 7–210 mirrors the duties and obligations of property owners with regard to sidewalks set forth in Administrative Code sections 19–152 and 16–123" (*Vucetovic v. Epsom Downs, Inc.*, 10 NY3d at 521, 860 NYS2d 429, 890 NE2d 191). However, Section 7–210 does not impose strict liability upon the property owner, and the injured party has the obligation to prove the elements of negligence to demonstrate that an owner is liable (*see Martinez v. Khaimov*, 74 AD3d 1031, 1032–1033, 906 NYS2d 274). Thus, in support of a motion for summary judgment dismissing a cause of action pursuant to Section 7–210, the property owner has the initial burden of demonstrating, prima facie, that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (*id.; see James v. Blackmon*, 58 AD3d 808, 808–809, 872 NYS2d 179); quoting *Harakidas v. City of New York*, 86 AD3d 624, 626–27, 927 NYS2d 673, 676 (2011).

In the present case, the defendants fail to meet their initial burden. To meet this burden, a defendant is required to establish as a matter of law that it maintained the premises in a reasonably safe condition and that it did not have actual or constructive notice of the defect. *See Jackson v. Supermarkets Gen. Corp.*, 214 AD2d 650, 625 NYS2d 290 (1985); *Grimes v. Golub Corp.*, 188 AD2d 721, 590 NYS2d 590 (Third Dept., 1993); *Candela v City of New York*, 8 AD3d 45, 778 NYS2d 31 (1st Dept., 2004). In the present case the defendants submit no proofs demonstrating that they neither created nor had notice actual or constructive of the alleged defect other than a self-serving

affidavit. Specifically, they do not submit any inspection logs or maintenance logs pertaining to the maintenance of the sidewalk area in front of their building. Moreover, there is absolutely nothing submitted regarding the dimensions of the alleged defect by any party. Additionally, there are question of fact as to the exact cause of plaintiffs fall (i.e. whether it was tripping on the defect or as a result of a condition the plaintiff suffers).

Accordingly, defendant's Motion for Summary Judgment is hereby denied as issues of fact exist, and such issues are for a jury to decide.

This constitutes the Decision/Order of the Court.
Date: May 29, 2020

RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

MAY 29 2020