SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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CARRIE QUINN,

Plaintiff,

-against-

GREENBLATT FAMILY ASSOCIATES LLC, ZERO EIGHT PROPERTIES LLC, MDSL ASSOCIATES, ALAN LEWIS and CHRISTINE JELALIAN,

Defendants.

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And a Third Party Action

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To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF011360-2018

Motion Date: May 17, 2021

The following papers numbered 1 to 6 were read on Defendants' motion for summary judgment dismissing Plaintiff's complaint:

Notice of Motion - Affirmation / Exhibits 1-2

Affirmation in Opposition - Affidavit / Exhibit 3-4

Affirmation in Support (Third-Party Defendant) 5

Reply Affirmation / Exhibits 6

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

A. Factual Background

This is an action to recover for personal injuries arising out of plaintiff Carrie Quinn's slip and fall on "white" ice at or about 7:00 p.m. on February 1, 2017 in the parking lot at office

premises owned by Defendants at 425 Robinson Avenue, Newburgh, New York. Defendants assert in conclusory fashion that they have demonstrated *prima facie* entitlement to summary judgment dismissing Plaintiff's complaint, and repeatedly urge that on the facts of record Plaintiff cannot establish a claim sounding in common law negligence against them.

B. Legal Analysis

A property owner owes a duty of reasonable care under the circumstances to prevent injuries to third persons from conditions on its property. *Basso v. Miller,* 40 NY2d 233 (1976). "A property owner will be held liable for a slip-and-fall accident involving ice and snow on its property only when it created the dangerous condition which caused the accident or had actual or constructive notice of its existence." *Giambruno v. Albrechet,* 192 AD3d 671, 672 (2d Dept. 2021); *Ahmetaj v. Mountainview Condominium,* 171 AD3d 683, 684 (2d Dept. 2019).

However, "[t]he proponent of a 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 University Medical Center,* 64 NY2d 851, 853 (1985). A defendant moving for summary judgment bears "the initial burden of establishing prima facie entitlement to judgment as a matter of law by affirmatively demonstrating the merit of its defense, rather than by pointing to gaps in the plaintiffs' evidence." *Wheaton v. East End Common Associates, LLC,* 50 AD3d 675, 677 (2d Dept. 2008). The movant's failure to meet this burden of proof "requires denial of the motion, regardless of the sufficiency of the opposing papers." *Winegrad v. New York University Medical Center, supra.*

Accordingly, "a defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the alleged condition

nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it." *Ahmetaj v. Mountainview Condominium, supra,* 171 AD3d at 684; *Milorava v. Lord & Taylor Holdings, LLC,* 133 AD3d 724, 725 (2d Dept. 2015). *See, Giambruno v. Albrechet, supra,* 192 AD3d at 672; *Murray v. Banco Popular,* 132 AD3d 743, 744 (2d Dept. 2015); *Grib v. NYCHA,* 132 AD3d 725, 726 (2d Dept. 2015); *Jordan v. Juncalito Abajo Meat Corp.,* 131 AD3d 1012 (2d Dept. 2015); *Paduano v. 686 Forest Avenue, LLC,* 119 AD3d 845 (2d Dept. 2014); *Valentin v. Shoprite of Chester,* 105 AD3d 1036 (2d Dept. 2013); *Babb v. Marshalls of MA, Inc.,* 78 AD3d 976 (2d Dept. 2010); *Zerilli v. Western Beef Retail, Inc.,* 72 AD3d 681 (2d Dept. 2010).

"A defendant has constructive notice of a dangerous condition when the condition has been visible and apparent long enough for the defendant to have discovered and remedied it." *Ahmetaj v. Mountainview Condominium, supra,* 171 AD3d at 684. *See, Gordon v. American Museum of Natural History,* 67 NY2d 836 (1986). The Second Department has consistently held that, "[t]o meet its initial burden on the issue of lack of constructive notice, a defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell." *Ahmetaj v. Mountainview Condominium, supra,* 171 AD3d at 684. *See, Milorava v. Lord & Taylor Holdings, LLC, supra,* 133 AD3d at 725; *Jordan v. Juncalito Abajo Meat Corp., supra,* 131 AD3d at 1012-13; *Osbourne v. 80-90 Maiden Lane Del, LLC, supra,* 112 AD3d at 899; *Marchese v. St. Martha's Roman Catholic Church,* 106 AD3d 881 (2d Dept. 2013) *Goodyear v. Putnam/Northern Westchester Bd. of Coop. Educ. Servs,* 86 AD3d 551, 552 (2d Dept. 2011); *Babb v. Marshalls of MA, Inc., supra,* 78 AD3d at 976; *Birnbaum v. New York Racing Association, Inc.,* 57 AD3d 598, 598-599 (2d Dept. 2008). As that Court

observed in *Marchese v. St. Martha's Roman Catholic Church, supra*:

> To meet its initial burden on the issue of lack of constructive notice, a defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff tripped (*see Tsekhanovskaya v. Starrett City, Inc.*, 90 AD3d 909, 910...; *Pryzywalny v. New York City Tr. Auth.*, 69 AD3d at 599...). A defendant fails to satisfy its initial burden as to lack of constructive notice when it simply presents evidence of its general cleaning or inspection practices rather than providing specific evidence as to when the area in question was last cleaned or inspected prior to the plaintiff's fall (*see Jackson v. Jamaica First Parking, LLC*, 91 AD3d at 603...; *Pryzywalny v. New York City Tr. Auth.*, 69 AD3d at 599...; *Arzola v. Boston Props. Ltd. Partnership*, 63 AD3d at 656...; *Feldmus v. Ryan Food Corp.*, 29 AD3d 940, 941...).

Marchese, 106 AD3d at 881.

The evidence of record shows that:

-- Snow fell on the day before the accident.

-- Defendants' snow removal contractor cleared the parking lot and piled the snow.

-- When Plaintiff arrived for work on the morning of the accident, the parking lot was clear and dry.

-- The day of the accident was sunny and clear.

-- At 7:00 p.m. that evening, Plaintiff slipped in the parking lot on "white" ice.

-- There is no evidence as to when, if ever, Defendants inspected the parking lot on the date of the accident.

Plaintiff's testimony that the ice on which she slipped and fell was "white" evidences the fact that the alleged hazardous condition was visible and apparent. There is no evidence as to when that condition was created, or how long it lasted, on February 1, 2017. Under the circumstances, Defendants failed to establish *prima facie* either that the alleged hazardous condition was not visible and apparent, or that it did not exist for a sufficient length of time prior to the accident to have permitted them in the exercise of reasonable care to discover and remedy it.

Consequently, they have not demonstrated entitlement to judgment as a matter of law on the issue of constructive notice. While Plaintiff will be required at trial to adduce evidence affirmatively establishing either that Defendants created the condition or that they had actual or constructive notice thereof, at this juncture summary judgment must be denied regardless of the sufficiency of Plaintiff's opposing papers. *Winegrad v. New York University Medical Center, supra; Ahmetaj v. Mountainview Condominium, supra,* 171 AD3d at 685.

It is therefore

ORDERED, that Defendants' motion for summary judgment is denied.

The foregoing constitutes the decision and order of the Court.

Dated: June 16, 2021 ENTER
Goshen, New York

Catherine M. Bartlett
HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE