STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **SUPERIOR COURT**

(FILED: DECEMBER 4, 2012)

ANN FILIPPONE	:	
	:	
v.	:	**C.A. No. PC/08-1116**
	:	
The CITY OF PROVIDENCE; STEPHEN T. NAPOLITANO, in his Capacity as TREASURER for the CITY OF PROVIDENCE; WILLIAM BOMBARD, in his Capacity as CIVIL ENGINEER for the CITY OF PROVIDENCE; PAUL THOMAS, in his Capacity as SUPERINTENDENT of the HIGHWAY DEPARTMENT; SAL SOLOMON, in his Capacity as SUPERINTENDENT of the HIGHWAY DIVISION; and JOHN DOE, ALIAS	:	

DECISION

MCGUIRL, J., Before the Court in this non-jury negligence action is a Motion for Judgment as a Matter of Law filed by Defendants City of Providence; Stephen T. Napolitano, in his Capacity as Treasurer for the City of Providence; William Bombard, in his capacity as Civil Engineer for the City of Providence; Paul Thomas, in his Capacity as Superintendent of the Highyway Department; and Sal Solomon, in his Capacity as Superintendent of the Highway Division (collectively, "the City" or "Defendants"). Plaintiff Anne Filippone ("Plaintiff") objects to the motion. She also has filed a Motion to Re-Open her case-in-chief in order to present additional evidence. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

On March 22, 2007, Plaintiff slipped and fell in a pedestrian crosswalk on Sabin Street, Providence, as she was crossing the road to attend an Elton John concert at the Dunkin' Donuts Center. The crosswalk had been constructed with brick pavers. The Plaintiff asserts that some of the brick pavers had become dislodged and that the resulting defect caused her to fall.

At the conclusion of Plaintiff's case, the City moved for judgment as a matter of law. It asserts that Plaintiff did not sustain her burden of proving that the City was negligent in failing to properly maintain and inspect the walkway in question. It further contends that Plaintiff failed to demonstrate that the area in question was defective, or that even if it were defective, she failed to prove that the City had actual or constructive notice of the alleged defect.

The Plaintiff objects, maintaining that she established through exhibits that that the City knew, or should have known, that the crosswalk was defective in nature. She further asserts that although the City acknowledged that it had an obligation to keep crosswalks in a safe condition—either through repairing or warning of problems—it admitted that it did not have either maintenance or repair policies in place. The Plaintiff also moved to re-open the presentation of her case in order to introduce photographic evidence to establish that the crosswalk upon which she fell has not been re-located or repaired.

II

Standard of Review

The Defendants have moved for judgment as a matter of law pursuant to Super. R. Civ. P. Rule 52. It provides in pertinent part:

> "If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court

> may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule." Super. R. Civ. P. Rule 52(c).[1]

It is axiomatic that pursuant to Rule 52(c), "a party may . . . move for judgment as a matter of law after the presentation of an opponent's case . . . ." Broadley v. State, 939 A.2d 1016, 1020 (R.I. 2008); see also Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 745 (R.I. 2009) ("Rule 52(c) permits a trial justice to enter judgment against a party who has been fully heard on an issue in a nonjury trial, and the court finds against the party on that issue.") (Internal citations omitted).

In ruling on a Rule 52(c) motion, and "to satisfy the demands of Rule 52(a), a trial court must do more than announce statements of ultimate fact. The court must support its rulings by spelling out the subordinate facts on which it relies." Cathay, Inc., 962 A.2d at 747 (quoting Damon v. Sun Co., 87 F.3d 1467, 1481 (1st Cir.1996)). Thus, any judgment must "be supported by facts found specially and conclusions of law stated separately." Id. Furthermore, in considering the motion, "a trial justice must assess the credibility of witnesses and weigh the evidence presented by the nonmoving party." Cathay, Inc., 962 A.2d at 745 (citing Broadley, 939 A.2d at 1020).

However, the aforementioned requirements do not mean that the trial justice is required to "engage in extensive analysis and discussion of all the evidence when rendering a decision in

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[1] Rule 52(a) of the Superior court Rules of Civil Procedure provides in relevant part:

> "In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon. . . It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court." Super R. Civ. P. Rule 52(a).

a non-jury trial; . . . [because], [e]ven brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." Cathay, Inc., 962 A.2d at 745 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998)) (internal quotations omitted). Finally, unlike in jury trials, "when deciding a motion for judgment as a matter of law in a nonjury trial . . . [,] the trial justice need not view the evidence in the light most favorable to the nonmoving party." Broadley, 939 A.2d at 1020.

III

Analysis

The Defendants assert that Plaintiff failed to present any evidence either that the area upon which she fell was defective, or that Defendants had actual or constructive knowledge of the alleged defect, or both; consequently, they request the Court to grant their Motion for Judgment as a Matter of Law. The Plaintiff objects and has filed a Motion to Re-Open her case. In doing so, she seeks to introduce photographic evidence allegedly substantiating the location where she sustained her fall, as well as showing the continued defective condition of the area.

In the event that the Court were to grant Plaintiff's Motion to Re-Open her case, then Defendants' Motion for Judgment as a Matter of Law would be rendered premature.[2] Consequently, the Court first will address Plaintiff's Motion to Re-Open.

A

Motion to Re-Open

The Plaintiff asserts that during the course of the trial, an issue arose as to whether the offending crosswalk had been relocated. On June 16, 2011, counsel for Plaintiff visited the area

[2] As noted previously, "a party may . . . move for judgment as a matter of law after the presentation of an opponent's case . . . ." Broadley v. State, 939 A.2d 1016, 1020 (R.I. 2008) (emphasis added). Should the Court allow Plaintiff to present further evidence, then her presentation would be incomplete for purposes of a Rule 52 motion. See Super. R. Civ. P. Rule 52(c) (requiring that a party be "fully heard on an issue" before consideration of an opponent's Motion for Judgment as a Matter of Law).

and took eleven photographs of the area in question. The Plaintiff seeks to re-open her case so that she may introduce this photographic evidence. Specifically, Plaintiff's counsel alleged:

> "The attached photographs substantiates [sic] the fact that it is in the exact area for crossing as introduced at trial. Furthermore, the photographs number 1, 2, 3, reflect the size of the brick, the hole it creates when removed, which I in fact did, (then replaced), as well as the continuing and ongoing defect of the area in question. The remaining photographs further substantiate the lack of attention to maintenance as noted by the white painted defining lines of the brick pavers and crosswalk which shows defects contained within the white lines, as well as the brick pavers, much like the photographs introduced at trial." (Anne Filipone's Motion to Re-Open, at 2.)

The City has objected to the Motion to Re-Open on relevancy grounds, asserting that the photographs are not a fair representation of the area at the time of Plaintiff's fall.

In Rhode Island, it is well settled "that a motion to reopen is within the sound discretion of the trial justice and that his [or her] decision thereon will not be disturbed by this court, unless clearly an abuse of such discretion." Russo v. G. W. Gooden, Inc., 108 R.I. 356, 275 A.2d 266, 270 (1971). Accordingly,

> "When sitting without a jury, a trial justice is vested with broad discretion to hear evidence, pass on the merits of a claim, and to reopen the case and take additional evidence when appropriate. A trial court's exercise of discretion is reviewed to determine whether it has been soundly and judicially exercised . . . with just regard to what is right and equitable under the circumstances . . . . When circumstances require the trial justice to exercise discretion, it is the duty of the court to consider and determine that question so that the rights of the parties may be fairly protected in an orderly manner. It is as much an abuse of judicial discretion in refusing to exercise such discretion when warranted by the facts before the court as it is to exercise that discretion improperly by means of a decision that is clearly erroneous on the facts or under the law." Connecticut Valley Homes of East Lyme, Inc. v. Bardsley, 867 A.2d 788, 795 (R.I. 2005) (internal citations and quotations omitted).

Rule 401 of the Rhode Island Rules of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." R.I. R. Evid. 401. Except when prohibited by law, "[a]ll relevant evidence is admissible . . . ." R.I. .R. Evid. 402. Conversely, "[e]vidence which is not relevant is not admissible." Id. Furthermore,

> "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, . . . or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." R.I. R. Evid. 403.

The Plaintiff seeks to re-open her case in order to introduce photographs that were taken more than four years after the incident. She asserts that the purpose of introducing these photographs is (a) to confirm the location where the alleged injury occurred; (b) to demonstrate the size an individual brick paver, as well as the depth of the hole that would be produced by its removal from the crosswalk;[3] and (c) to show that the alleged defective condition of the crosswalk is continuing and ongoing relative to photographs that already had been introduced at trial.

After reviewing the evidence, the Court concludes that the photographs are irrelevant and thereby inadmissible. To begin with, the photographs were taken over four years after the incident, and there is no way of knowing whether the photographs accurately reflect the condition of the crosswalk at the time that the incident occurred. See Boucher v. CVS/Pharmacy, Inc., 822 F.Supp. 2d 98, 103 (D.N.H. 2011) (stating that "where photographs are represented to portray the condition of a thing, in order to be relevant and admissible, [the

[3] To accomplish this demonstration, counsel for the Plaintiff actually removed a brick paver from the crosswalk, placed it next to the resulting hole, and then photographed the end product. These photographs are marked as numbers 1, 2, and 3 of the nine proffered photographs.

proponent] will bear the burden of demonstrating the photographs taken subsequent to the accident represent the condition of the [thing] at the time of the accident") (quoting Minter v. Prime Equip. Co., No. CIV–02–132–KEW, 2007 WL 2703093, *4 (E.D.Okla. Sept. 14, 2007); see also Berkovich v. Hicks, 922 F.2d 1018, 1025 (2nd Cir. 1991) (stating photographs "were not probative of the location of street signs four and one-half years earlier at the time of the incident").

The photographs in this case were taken more than four years after Plaintiff's fall. The fact that a brick paver was removed from the crosswalk for demonstrative reasons underscores Defendants' argument that the photographs did not represent the condition of the crosswalk at the time of the accident. Consequently, the Court concludes that the June 16, 2011 photographs are not relevant either to prove the condition of the area on March 22, 2007, or to determine whether the City had actual or constructive notice of an alleged defect at that time. The Court further observes that the probative value, if any, of removing a brick for the purpose of demonstrating the size of the pavers and the resulting hole "is substantially outweighed by the danger of unfair prejudice [and] confusion of the issues. . . ." R.I. R. Evid. 403.

Rule 407 provides: "When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is admissible." R.I. R. Evid. 407. In the instant matter, Plaintiff specifically avers that the photographs "reflect . . . the continuing and ongoing defect of the area in question [and] . . . further substantiate the lack of attention to maintenance[,] . . . much like the photographs introduced at trial." It is clear from this statement that Plaintiff believes that the City has not taken any remedial measures whatsoever; consequently, the photographs would not be admissible under Rule 407.

In view of the foregoing, Plaintiff's Motion to Re-Open is denied. The Court next will address the City's Motion for Judgment as a Matter of Law.

B

Motion for Judgment as a Matter of Law

The Defendants maintain that their motion should be granted because Plaintiff did not meet her burden of proving that the City had breached its duty to maintain the area in question. Specifically, they aver that Plaintiff has not offered any evidence to show that her slip and fall was caused by a defective crosswalk. Additionally, Defendants contend that even if the crosswalk were defective, Plaintiff failed to show that the City had actual or constructive notice of the alleged defect.

The Plaintiff asserts that the City admitted, through its employee/defendant, that it was aware of problems with brick pavers in general. The Plaintiff contends that the same employee/defendant conceded that he was not aware of any regular maintenance program for inspecting crosswalks or erecting warning signs.

Our Supreme Court has declared that "[t]he liability of a municipality to keep its walks safe for travel is a statutory one." Quinn v. Stedman, 50 R.I. 153, 146 A. 618, 620 (1929). Accordingly, while "a municipality is not an insurer with respect to the condition of the sidewalks, it has the duty to exercise due care to keep such walks in a reasonably safe condition for travel." Barroso v. Pepin, 106 R.I. 502, 508, 261 A.2d 277, 280 (R.I. 1970). To fulfill this duty, "Section 24-5-1 requires the municipalities to maintain the highways in full, including the sidewalks." Id.; see also Pullen v. State, 707 A.2d 686, 689 (R.I. 1998) (reiterating that a "town's duty to keep its roads in good repair has been interpreted . . . to include maintaining sidewalks located adjacent to the roadway") (citing Barroso, 106 R.I. at 508, 261 A.2d at 280;

Hoyt v. Allen, 55 R.I. 360, 362, 181 A. 411, 412 (1935); Child v. Greene, 51 R.I. 477, 479, 155 A. 664, 665 (1931)).

Section 24-5-1 provides in pertinent part:

> "All highways, causeways, and bridges, except as provided by this chapter, lying and being within the bounds of any town, shall be kept in repair and amended, from time to time, so that the highways, causeways, and bridges may be safe and convenient for travelers with their teams, carts, and carriages at all seasons of the year, at the proper charge and expense of the town, under the care and direction of the town council of the town, provided that the state shall be responsible for the annual cleaning of all sidewalks on all state highways, causeways, and bridges." Sec. 24-5-1(a) (emphasis added).

Although the statute requires municipalities to maintain roads and sidewalks in a "safe and convenient" condition, this does not require that sidewalks:

> "shall be absolutely safe or free from defects, but reasonably so; that is to say, when the traveled way is without obstruction or structural defects which endanger the safety of travelers, and is sufficiently level and smooth to enable persons, by the exercise of ordinary care, to travel with safety and convenience, it is 'safe and convenient,' within the meaning of [§ 24-5-1], and the town has discharged its full duty in the premises." McCloskey v. Moies, 19 R.I. 297, 33 A. 225, 226 (1895).

Accordingly, a town only is required to keep its roads and sidewalks "reasonably safe[,]" because a "[r]equirement of absolute safety would be an intolerable burden upon a municipality." Quinn, 50 R.I. 153, 146 A. at 620. Furthermore, it must be remembered that "[t]he mere fact of an accident does not warrant an inference that the walk was not reasonably safe." Id. Thus, considering that a "town is not an insurer of the safety of its sidewalks . . . . [e]very possibility of an accident is not to be anticipated." Id. (internal citations omitted).

In determining the existence of a defect, "the location and use of the highway, the season of the year, the place of the accident, the time of day or night, the manner and nature of the

accident, and all the other circumstances which throw light upon the happening thereof, should be taken into consideration." McCloskey, 19 R.I. 297, 33 A. at 226. Notwithstanding, however, "[c]ertain inequalities in walks are inevitable and such do not constitute negligent upkeep." Quinn, 50 R.I. 153, 146 A. at 620. Moreover, "[t]he defect causing injury to a person to be actionable must be of such a character, in view of its location and the use made of the walk, that it has attracted the attention of town officers or should cause them if exercising due care to anticipate danger therefrom to a pedestrian." Id.

With this in mind, the existence of an alleged defective condition, such as slippery ice, would "not constitute a defect under the statute, so as to render the town liable for an injury sustained, unless notice shall have been given as aforesaid." McCloskey, 19 R.I. 297, 33 A. at 226. For that reason, any "[n]egligence in keeping sidewalks safe is to be determined by what the town knew or ought to have known before, and not after, a pedestrian falls[,] [and] [i]f reasonable men may differ about whether an accident ought to have been anticipated, the question of the town's negligence is a proper question for submission to a jury." Quinn, 50 R.I. 153, 146 A. at 620; see also McCloskey, 19 R.I. 297, 33 A. at 226 (stating that "whether or not a given highway is defective, so as to enable a party injured thereon to maintain an action against the town, is a question of fact for the jury").

In the present case, Plaintiff did not produce any evidence demonstrating that the City had actual knowledge of the allegedly defective sidewalk. However,

> "actual notice of a defect in one of its public ways is not a necessary condition of a municipality's liability for injury occasioned by the public way. Constructive notice is sufficient. Constructive notice means notice which the law imputes from the circumstances of the case and is based on the theory that negligent ignorance is no less a breach of duty than willful neglect, and that negligence in not knowing of the dangerous condition may be

> shown by the circumstances." 19 Eugene McQuillin The Law of Municipal Corporations § 54:181 at 584-86 (3d ed. 2010).

Consequently, if there is evidence in the record suggesting that the City had constructive knowledge of the alleged defect, then the granting of Defendants' Motion for Judgment as a Matter of Law would not be appropriate. See Sunapi v. Lee, 102 A. 961, 961 (R.I. 1918) (upholding jury verdict in plaintiff's favor where plaintiff demonstrated constructive notice of a defect to the city by introducing "the testimony of a number of witnesses to the effect that th[e] obstruction had existed on the sidewalk for a considerable length of time before the time of the accident"); 19 Eugene McQuillin The Law of Municipal Corporations § 54:181 at 587-88 (stating that "[w]here observable defects in a public way have existed for so long a time as they ought to have been observed, notice of them is implied, and is imputed to those persons whose duty it is to repair them; . . . .") Furthermore, "[c]onstructive notice is established when the evidence shows that the defective condition, although not actually known by the city, could have been known by the exercise of ordinary diligence and care on its part." Id. at 590.

Our Supreme Court has stated that "[t]he test of constructive notice is not dependent upon the lapse of time alone but upon the special circumstances prevailing in each particular case." Priestly v. First Nat'l Stores, Inc., 95 R.I. 212, 215, 186 A.2d 334, 336 (1962) see also McVeigh v. McGullough, 96 R.I. 412, 421, 192 A.2d 437, 443 (1963) ("Time alone is not the sole test of constructive knowledge."). Additionally,

> "Although it is true that a plaintiff must present a threshold amount of evidence for his negligence case to withstand a motion for judgment as a matter of law, we also have recognized that evidence that an employee or agent of a defendant was in the immediate location just before the accident was sufficient enough for reasonable minds to disagree on the question of whether the defendant was on notice of the dangerous condition, allowing consideration by a jury." Mead v. Papa Razzi Restaurant, 840 A.2d 1103, 1107-08 (R.I. 2004).

In the instant matter, Plaintiff presented evidence that her injury occurred on the evening of March 22, 2007, while she was crossing Sabin Street to go to an Elton John concert at the Dunkin' Donut Center. At the time of the incident, the pedestrian traffic was being directed by a Providence police officer. The Plaintiff also presented the March 16, 2010 deposition testimony of Defendant William C. Bombard ("Bombard"), Chief Engineer of the Department of Public Works for the City of Providence. The City stipulated that Bombard had spoken on behalf of the City.

Bombard stated that the area upon which Plaintiff fell was a primary crosswalk. (Bombard Deposition Testimony, dated March 16, 2010, at 10.) He further testified that the City "has an unwritten policy that we attempt to fill potholes and defects in our streets within 48 hours, once they become known to us." Id. at 12. However, he admitted that he was "not aware of any regular maintenance program for inspecting crosswalks[,]" and that "we do not have a policy for the regular inspection of the crosswalks in the [Dunkin' Donuts] area." Id. 17. He also conceded that he was "not aware of any warning signs" for defects except for "occasions when we may put out traffic cones or barrels to prevent pedestrians from entering into an area where there is severe distress." Id. at 14-15.

When Plaintiff's counsel showed Bombard a photograph allegedly taken of the area where Plaintiff fell, Bombard agreed it depicted a gap from which a brick was missing. Id. at 13. Bombard also observed that "[t]he cavity created by the missing brick appears to be partially filled with sand." Id. at 21. He stated that sand is typically used for snow and ice control and speculated that it was possible that the hole at one time had been completely filled, thereby rendering the hole difficult to observe. Id. With respect to how long it would have taken for that amount of sand to accumulate, Bombard agreed that it did not look like it would have happened

in one week; rather, he stated that he could "see it occurring over one winter of sanding operations." Id. at 30-31.

Keeping in mind the standard for granting a Motion for Judgment as a Matter of Law, the Court concludes that Plaintiff presented sufficient evidence to withstand such a Motion. The record reveals that a reasonable minds could disagree as to whether (a) there was a partially-filled cavity in the crosswalk; (b) the exposed cavity caused Plaintiff's injury; (c) the build-up of sand demonstrated that the cavity had existed for quite some period of time before the incident occurred; and, (d) the City had constructive knowledge of the cavity, both because of the longevity of its existence, and because a police officer was in the immediate location just prior to Plaintiff's slip and fall. In light of this conclusion, the Court denies Defendants' Motion for Judgment as a matter of Law. Having denied this motion, and Plaintiff's Motion to Re-Open, the Court now will render its verdict in the case.

C

The Verdict

This case involves an allegation of negligence against the City. It is axiomatic that for a plaintiff to prevail on a negligence claim, he or she "must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage." Habershaw v. Michaels Stores, Inc., 42 A.3d 1273, 1276 (R.I. 2012) (quoting Holley v. Argonaut Holdings, Inc., 968 A.2d 271, 274 (R.I. 2009); see also Gushlaw v. Milner, 42 A.3d 1245, 1252 (R.I. 2012) ("It is not until a legal duty is established that a plaintiff is entitled to a factual determination on the enduring elements of his or her negligence claim—breach of duty, proximate causation, and actual loss or damage.").

It is undisputed that the City had a legal duty to maintain the Sabin Street crosswalk in a reasonably safe condition. See Pullen, 707 A.2d at 689; Barroso, 106 R.I. at 508, 261 A.2d at 280; Quinn, 50 R.I. 153, 146 A. at 620. Consequently, Plaintiff satisfied her requirement to establish that the City owed her a legally cognizable duty.

The Court next must determine whether there was a breach of that duty and, if so, whether that breach proximately caused Plaintiff's injury that resulted in an actual loss or damage to Plaintiff. In doing so, the Court is mindful that "a justice in a nonjury trial . . . make[s] determinations of credibility and findings of fact." Jalex Builders, Inc. v. Monaghan, 840 A.2d 1142, 1144 (R.I. 2004) (citing Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003) ("The task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.") At the outset, the Court observes that Bombard's credible deposition testimony which, as stipulated by Defendants, was given on behalf of the City, was crucial to Plaintiff's case.

It is undisputed that on the night of Plaintiff's slip-and-fall, the Dunkin' Donuts Center was hosting an Elton John concert and that police officers were located in the vicinity to direct traffic, including pedestrian traffic that traversed the Sabin Street crosswalk in which Plaintiff fell. In his deposition, Bombard acknowledged that the crosswalk was a primary crosswalk for purposes of accessing the main doorway to the Dunkin' Donuts Center. (Bombard Deposition Testimony, at 10.)

As noted above, Bombard testified: (a) the City "has an unwritten policy that we attempt to fill potholes and defects in our streets within 48 hours, once they become known to us[,]" id. at 12; (b) the City does "not have a policy for the regular inspection of the crosswalks in the [Dunkin' Donuts] area[,]" id. 17; (c) he was "not aware of any warning signs" for defects except

for "occasions when we may put out traffic cones or barrels to prevent pedestrians from entering into an area where there is severe distress." Id. at 14-15.

With respect to the Sabin Street crosswalk, Bombard admitted that photographic evidence of the area showed a gap from which a brick was missing and that the resulting cavity "appear[ed] to be partially filled with sand" typically used to control ice and snow accumulation. Id. at 21. Bombard also admitted that this defect was "significant." Id. at 27.

The record reveals that the approximate depth of a brick is two and one-half inches and, as Bombard admitted, the cavity in question looked to as if it had been filled with sand to within half an inch of the surface of the crosswalk. Id. at 30. Bombard then testified that given the amount of sand in the cavity, it was unlikely that said accumulation happened in as short a space of time as a week; rather, it could have "occur[ed] over one winter of sanding operations." Id. at 30-31.

From the foregoing evidence, the Court finds that on March 22, 2007, there existed a significant defect in the crosswalk upon which Plaintiff slipped and fell. The Court further finds that this defect existed for a considerable period before Plaintiff's fall, as evidenced by the fact that it would have taken quite some time for sand to partially conceal the hole. Given the length of time that the defect existed—coupled with the fact that a police officer was present at that same location when the fall occurred—the Court concludes that the City had constructive knowledge of the defect despite the fact that it did not have a regular inspection policy for the area in question. See Sunapi, 102 A. at 961 (upholding jury verdict where plaintiff demonstrated constructive notice of a defect).

Although the City apparently has an unwritten policy to correct defects within forty-eight hours of discovery, and notwithstanding its constructive knowledge of a defect in the Sabin

Street crosswalk, there is no evidence in the record to suggest that it took any action whatsoever with respect the defect, either by attempting to fill the hole, or by placing warning signs such as traffic cones or barrels in the vicinity of the hole. By failing to take any action with respect to this known defect, the Court concludes that the City breached its duty to maintain the crosswalk in a reasonably safe condition.

It is undisputed that Plaintiff suffered actual loss or damage as a result of the City's breach of its duty to appropriately maintain the crosswalk. Consequently, the Court concludes that Plaintiff has sustained her burden of proving negligence on the part of Defendants.

IV

Conclusion

In light of the foregoing, the Court denies Plaintiff's Motion to Re-Open and Defendants' Motion for Judgment as a Matter of Law. Counsel shall submit an appropriate Order and Judgment for entry. Furthermore, the Court concludes that Plaintiff sustained her burden of proving negligence in her action against Defendants. Consequently, judgment shall enter in favor of Plaintiff on her claim.