

15-294JN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20 X

JACQUELINE DOMINGUEZ,
Plaintiff,

Index No: 301246/2015

-against-

DECISION AND ORDER

NATASHA FRIDAY,
Defendants. X

Present:
HON. KENNETH L. THOMPSON, JR.

The following papers numbered 1 to 3 read on this motion to dismiss

| No | On Calendar of May 5, 2017 | PAPERS NUMBER |
|----|---|---------------|
| | Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed----- | 1 |
| | Answering Affidavit and Exhibits----- | 2 |
| | Replying Affidavit and Exhibits----- | 3 |
| | Affidavit----- | |
| | Pleadings -- Exhibit----- | |
| | Memorandum of Law----- | |
| | Stipulation -- Referee's Report --Minutes----- | |
| | Filed papers----- | |

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendant, Natasha Friday, moves pursuant to CPLR 3212, to dismiss the complaint. This action arose as a result of personal injuries sustained by plaintiff, Jacqueline Dominguez, on February 11, 2015 in a slip and fall on ice on a sidewalk in front of property owned by defendant. The property is a one-family owner-occupied residential home.

Plaintiff concedes that New York City Administrative Code 7-210 is inapplicable as the one family owner-occupied residential home falls in an exception. Consequently, “[o]nly if there is evidence that the owner's attempts at snow removal made the sidewalk more hazardous is the owner exposed to tort liability (see *Palmer, supra; Steo, supra; Gerber, supra; Rodriguez, supra; Quiles, supra; Stewart, supra*).” *Rios v. Acosta*, 8 A.D.3d 183, 184 [1st Dept 2004].

The sidewalk was shoveled and it is undisputed that plaintiff’s photographs

showed that salt was on the shoveled path. Defendant testified that she did not take notice of salt on the sidewalk, since, as she testified, she was not looking for salt. She testified that she did not spread the salt due to her pregnancy but that her brother did. (transcript, p. 19). In response to defendant's prima facie case for dismissal of the complaint, plaintiff has not advanced any evidence as to how defendant made the sidewalk more dangerous by snow removal efforts.

It has been repeatedly held that "one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegation or assertions are insufficient." *Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980).

Accordingly, defendant's motion is granted and the complaint is hereby dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: 7/21/2017



KENNETH L. THOMPSON JR. J.S.C.