ORDER
SUPREME COURT OF THE STATE OF NEW YORK
Present: HON. TAMMY S. ROBBINS, Acting Justice

TRIAL/IAS, PART 47

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ANGELA SANTORO

Plaintiff,

- against -

Index No. 015617/04
Motion Seq. 001
Motion submission: 3/7/06

ROBERT TICE and CAROL TICE,

Defendants,

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Defendants, Robert Tice and Carol Tice, have moved this court, pursuant to Civil Practice Law and Rules (CPLR) § 3212 for an order granting summary judgment and dismissing the complaint of the plaintiff. The plaintiff has filed an Affirmation in Opposition and the defendants have filed a Reply Affirmation.

This action arises from an incident which occurred on April 2, 2004 in which the plaintiff, Angelo Santoro, tripped and fell on wet leaves on the sidewalk in front of defendants' property located at 86 Warwick Road, Island Park, Nassau County, New York. Plaintiff alleges that her fall was due to the defendants' negligence in failing to maintain the sidewalk in a safe manner, failing to clear off leaves and debris from the sidewalk and in failing to warn the public of the dangerous and slippery condition of the sidewalk.

Defendants argue that summary judgment should be granted in that the condition alleged by the plaintiff was open and obvious and, as a matter of law, not inherently dangerous.

Defendants further assert that the plaintiff cannot prove that they created the alleged dangerous condition on the sidewalk and that they did not have notice of such condition.

On a motion for summary judgment, the moving party must make a prima facie showing of entitlement to summary judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*Winegrad v. New York University Medical Center*, 64 NY2d 851 *citing Zuckerman v. City of New York*, 49 NY2d 557.) Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Id.*). The court must view the evidence in the light most favorable to the non-moving party and must give the non-moving party the benefit of all reasonable inferences which can be drawn from the evidence (*see Negri v. Stop and Shop, 65 NY2d 625*). Once a prima facie showing has been made, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact *(Johnson v. Queens-Long Island Medical Group*, 2005 WL 3118028).

"[W]hether a dangerous or defective condition exists on the property of another so as to create liability 'depends on the peculiar facts and circumstances of each case' and is generally a question of fact for the jury" (Trincere v. County of Suffolk, 90 NY2d 976, 977; see also Guerreri v. Summa, 193 AD2d 547). "While landowners have a duty to prevent the occurrence of forseeable injuries on their premises, they are not obligated to warn against a condition of the land that could be readily observed by the use of one's senses." (Moriello v. Stormville Airport Antique Show and Flea Market, Inc. 271 AD2d 664).

Plaintiff testified that it was raining when she left her home on the day of the accident. Plaintiff stated that while walking on the sidewalk on Warwick Road, approximately a half a block from the accident site, she saw wet leaves on the sidewalk and these leaves caused her to

have difficulty walking. Plaintiff stated that she fell on the sidewalk because it was slippery. (see defendant's exhibit D).

Defendants "made a prima facie showing that [they] neither created nor had actual or constructive notice of the condition. In opposition, the plaintiff failed to raise a triable issue of fact as to whether the leaves upon which [she] allegedly slipped were visible and apparent for a sufficient length of time that, in the exercise of reasonable care, the defendants were or should have been aware of them and taken remedial action." (*Henry v. Long Island Savings Bank, FSB*, 277 AD2d 351). Plaintiff's statement that she "observed the same leaves scattered across the sidewalk and driveway at least one week before the accident" is speculative and conclusory and insufficient to rebut defendant's prima facie showing. Moreover, plaintiff's own testimony is that she observed the wet leaves approximately a half a block prior to her fall and therefore, there is no question that this condition was readily observed by the use of her senses.

In accordance with the foregoing opinion of this court, the defendant's motion for summary judgment is granted in its entirety.

It is so Ordered.

Honorable Tammy S. Robbins

Dated: April 27, 2006