

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
GEORGINE SULLIVAN,

Plaintiff,

-against-

CHURCH OF THE IMMACULATE CONCEPTION
and FULL FORCE LANDSCAPING, LLC,

Defendants.

-----X
HON. DAVID FRIED, A.J.S.C.

DECISION & ORDER

Index No. 035876/2023
Motion Sequence Nos. 1 & 2

The papers filed electronically via NYSCEF numbered 29 - 40, 50, 56 - 60, 66 - 73, 82 - 86, 97 - 98, and 101 ("Motion Sequence No. 1"); and, 42 - 49, 51, 61 - 65, 74 - 81, 87 - 91, and 99 - 100 ("Cross-Motion Sequence No. 2") were read and considered herein. Upon such reading and consideration, the Motions are disposed as follows:

BACKGROUND

Plaintiff Georgine Sullivan ("Plaintiff") is seeking to recover for personal injuries she allegedly sustained on January 9, 2022, when she claims to have slipped and fell on a patch of ice while leaving mass service at Defendant Church of the Immaculate Conception ("Defendant Church"), located in Stony Point, New York. Defendant Full Force Landscaping, LLC ("Defendant Full Force") was an independent contractor hired by Defendant Church to perform snow and ice removal services. Plaintiff claims, *inter alia*, that Defendants were negligent in connection with the subject incident. Crossclaims have also been asserted by and against Defendants for contractual and/or common law indemnification. Issue was joined on April 7, 2025. The Note of Issue was filed on December 29, 2025.

On March 3, 2026, Defendant Full Force brought Motion Sequence No. 1 seeking an order pursuant to CPLR § 3212 granting summary judgment in its favor, dismissing all claims and crossclaims asserted against it. Plaintiff opposes Motion Sequence No. 1. Defendant Church opposes Motion Sequence No. 1, in part.

On March 6, 2026, Defendant Church brought Cross-Motion Sequence No. 2 seeking an order pursuant to CPLR § 3212 for summary judgment in its favor, dismissing Plaintiff's Complaint. Plaintiff opposes Motion Sequence No. 2.

CONTENTIONS

In support of Motion Sequence No. 1, Defendant Full Force contends, *inter alia*, as follows: that Defendant Full Force did not launch a force of harm that caused or gave rise to the subject accident; that Defendant Full Force performed services at the subject premises mere hours prior to the subject accident to remove any conditions such as the subject condition; that the application of ice melt on sidewalks is the opposite of launching a force of harm; that Defendant Church's witness, Father DeGaris, testified that the work of Defendant Full Force at the subject premises was "always successful"; that Defendant Full Force's witness, Anthony Tortorello, testified that the sidewalks at the subject premises were cleared down to bare pavement; Defendant Full Force did not have a comprehensive and exclusive responsibility for snow and ice services at the subject premises and did not entirely replace Defendant Church's obligations; that Defendant Church is not entitled to common law indemnification as a matter of law since Defendant Full Force is not negligent; and Defendant Church is not entitled to contractual indemnification as there is no such language in the agreement between the two Defendants.

In partial opposition to Motion Sequence No. 1, Defendant Church contends as follows: that if the Court determines that a question of fact exists concerning whether the ice removal efforts employed at the church on January 9, 2022, created a hazardous condition or exacerbated the natural hazard created by the storm, then a corresponding question of fact exists as to whether Defendant Full Force launched a force or instrument of harm and assumed a duty of care to the Plaintiff.

In opposition to Motion Sequence No. 1, Plaintiff contends, *inter alia*, as follows: that it is without dispute that a winter snowstorm with approximately 3.3" of snow accumulation occurred on January 7, 2022, two days prior to Plaintiff's fall; that Plaintiff fell on pre-existing ice from the January 7, 2022, snowstorm; that Plaintiff's testimony describes an old, crusty, and thick ice patch that she observed both before and after her fall; that Plaintiff's expert meteorologist opined that such a condition could only have developed from a prior winter event, as the light precipitation on the morning of Plaintiff's fall was incapable of producing ice of the requisite thickness and texture; and that said presence and impact of "rough," "crusty," and "old" ice on the walkway two days following an uncontested winter storm, demonstrates (or at minimum creates a question of fact) that such condition was visible and apparent, and existed for a sufficient length of time for the church to have discovered and remedied same.

In opposition to Motion Sequence No. 1, Plaintiff further contends, *inter alia*, as follows: that upon arriving at the church on January 9, 2022, Plaintiff observed a "blue pile" of ice melt that was not spread on the walkway, instead dumped exclusively on the right side of the walkway; Plaintiff did not

see any ice melt material spread in the area of the ice patch which caused her fall, which was towards the left side of the walkway; and that Defendant Full Force's act of dumping a concentrated pile of ice melt in a single spot while leaving the adjacent area of the walkway untreated and unsafe, actively exacerbated the existing snow and ice from the January 7, 2022 snowstorm.

In its reply on Motion Sequence No. 1, Defendant Full Force contends, *inter alia*, as follows: that Plaintiff has only opposed Defendant Full Force's Motion Sequence No. 1 based on a launched force of harm; Plaintiff's argument that Defendant Full Force launched a force or harm, which is limited to the purported concentrated pile of ice melt located on the sidewalk which supposedly exacerbated snow and ice from a prior snowstorm, is speculative and conclusory in nature and not supported by objective evidence and testimony; and Defendant Full Force did not use blue ice melt at the subject premises.

In its reply on Motion Sequence No. 2, Defendant Church contends, *inter alia*, as follows: that Plaintiff, in her affirmation in opposition to Motion Sequence No. 2, states that she observed an 8" x 12" patch of ice on the sidewalk in front of the church and that she stepped upon same on the way out of the church; however, Plaintiff previously testified at her deposition that said patch of ice was located near the edge of the sidewalk adjacent to the parking lot; and that Plaintiff speculates as to when the ice patch formed.

DISCUSSION

Defendant Church's cross motion is an improper vehicle for seeking affirmative relief from a nonmoving party (see, CPLR 2215) (*Mango v Long Is. Jewish-Hillside Med. Ctr.*, 123 A.D.2d 843, 844, 507 N.Y.S.2d 456 [2nd Dept. 1986]). However, "[s]uch a technical defect may be disregarded where, as here, there is no prejudice, and the plaintiff had ample opportunity to be heard on the merits of the relief sought (see, CPLR 2001)" (see, *Volpe v Canfield*, 237 A.D.2d 282, 283, 654 N.Y.S.2d 160 [2nd Dept. 1997]).

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a Court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. *Giuffrida v. Citibank Corp., et al.*, 100 N.Y.2d 72 (2003) (citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. *Lacagnino v. Gonzalez*, 306 A.D.2d 250 (2d Dept 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. *Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124 (2000). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. *Jacobsen v. New York City Health and Hospitals Corp.*, 22 N.Y.3d 824, 833, 988 N.Y.S.2d 86 (2014).

“[O]wners of real property onto which members of the public are invited have a nondelegable duty to provide the public with reasonably safe premises and safe means of ingress and egress. *Smith v. Harir Realty Associates, Inc.*, 109 A.D.3d 897, 971 N.Y.S.2d 451 (2d Dept. 2013). “A property owner will be held liable for a slip-and-fall accident involving snow and ice on its property only when it created the dangerous condition which caused the accident or had actual or constructive notice thereof.” *Id.* “[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 N.Y.2d 976, 977, 665 N.Y.S.2d 615, 688 N.E.2d 489 [internal quotation marks omitted]; see *Villalba v. Daughney*, 214 A.D.3d 843, 843–844, 183 N.Y.S.3d 755).” *De La Cruz v. NJE Enterprises, Inc.* --- N.Y.S.3d ---2023 WL 6853776.

Under the “Storm-in-Progress Rule”, a property owner will not be held responsible for accidents occurring as a result of the accumulation of snow and ice on its premises until an adequate period of time has passed following the cessation of the storm to allow the owner an opportunity to ameliorate the hazards caused by the storm. *Bradshaw v. PEL 300 Associates*, 152 A.D.3d 635, 636, 59 N.Y.S.3d 90 (2d Dept. 2017). “However, once a property owner elects to engage in snow removal activities, the owner must act with reasonable care so as to avoid creating a hazardous condition or exacerbating a natural hazard created by the storm. *Wei Wen Xie v. Ye Jiang Yong*, 111 A.D.3d 617, 618, 974 N.Y.S.2d 113 (2d Dept. 2013).

The crux of Defendant Church’s argument, in its initial motion papers, is that Defendant Church cannot be held responsible because there was a storm in progress. However, two things can be true at the same time. Plaintiff alleges that she slipped on a patch of ice that had formed because of a prior storm. Plaintiff amplified said allegation in her Supplemental Bill of Particulars, which was served prior to Defendant Church moving for summary judgment (see, NYSCEF Doc. No. 45). Also prior to submission of said Motion, Plaintiff testified at her deposition that she fell on a crusty patch of ice that was 11-12 inches long and a half inch to an inch thick (see, NYSCEF Doc. No. 57 pp. 40-41). Notwithstanding, Defendant Church’s meteorologist’s affirmation in support of Motion Sequence No. 2 does not address the allegation that the alleged ice patch formed prior to the purported storm in progress and generally focuses on whether there was a storm in progress (see, NYSCEF Doc. No. 48). As such, Defendant Church has not met its burden, having failed to tender sufficient evidence to demonstrate the lack of material issues of fact.

Notwithstanding, in opposition to Motion Sequence No. 2, Plaintiff raises material issues of fact. In support of Motion Sequence No. 2, Defendant Church’s witness states that at about 9:10 AM, he observed that the outdoor walkway area in the front of the church was completely free of ice and snow, and the area had a white paste material upon it and across the entire walkway and entry area, which was the residue of the calcium chloride that had been spread on the walkway and sidewalks (NYSCEF Doc. No. 47 ¶ 6). In contrast, Plaintiff testified that when she arrived at the church at 9:20 AM (NYSCEF Doc. No. 57 p. 13) she observed ice patches upon the outdoor walkway area in the

front of the church (NYSCEF Doc. No. 57 pp. 116-118). Plaintiff also testified that the ice melt was not spread over the walkway, and instead was in one spot in a small pile (NYSCEF Doc. No. 57 pp. 20-22).

Moreover, in contrast to Defendant Church's contention that Plaintiff speculates as to when the ice patch formed, Plaintiff submits the affirmation of a meteorologist who opines that the ice patch, as described by Plaintiff, could only have developed from a prior winter event, as the light precipitation on the morning of Plaintiff's fall was incapable of producing ice of the requisite thickness and texture (see, NYSCEF Doc. No. 64). As such, a material issue of fact also exists as to the applicability of the "Storm-in-Progress Rule." Noteworthy, as to Defendant Church's contention, in its reply (as more fully set forth above), that Plaintiff's statement in her affirmation regarding the location of the incident is different than her deposition testimony, Defendant Church misrepresents the alleged facts. In both Plaintiff's deposition and affirmation, Plaintiff states that she exited the church through its main entrance, walked down the two exterior steps to the walkway, took about two more steps on the walkway in the direction of the parking lot, when she was caused to slip and fall (see NYSCEF Doc. No. 57 p. 33 lines 19-25 - p. 34 line 25, p. 37 lines 13-17; and NYSCEF Doc. No. 58 ¶ 12, respectively). Based on the foregoing, Defendant Church's Motion Sequence No. 2 is denied. The Court now turns its attention to Motion Sequence No. 1, and more specifically, whether Defendant Full Force breached a duty of care to Plaintiff.

The assumption of a contractual obligation, standing alone, generally does not create a duty of care to a third party (*Espinal v. Melville Snow Contractors, Inc.*, 98 NY2d 136 [2002]). For a party to a contract to be held tortiously liable to third parties for its breach of contractual duties, one of the three following exceptions under *Espinal, Id.*, must apply: (1) the contracting party, in failing to exercise reasonable care in the performance of its duties, must have launched a force or instrument of harm which caused the plaintiff's injury; (2) the plaintiff must have detrimentally relied on the continued performance of the contracting party's duties; or (3) the contracting party entirely displaced the other party's duty to maintain the premises safely (*Martinelli v. Dublin Deck, Inc.*, 198 AD3d 635, 637 [2d Dept 2021]; see also *Espinal*, 98 N.Y.2d at 140). "Where the pleadings do not allege facts that would establish the applicability of any of the Espinal exceptions, a defendant is not required to affirmatively demonstrate that the exceptions do not apply in order to establish its prima facie entitlement to judgment as a matter of law" (*Martinelli*, 198 AD3d at 637; *Forbes v. Equity One Northeast Portfolio, Inc.*, 212 AD3d 780, 781-782 [2d Dept 2023]). "However, where any of the Espinal exceptions are pleaded in the complaint or the bill of particulars, a defendant contractor is required to demonstrate that those pleaded exceptions do not apply in order to establish its prima facie entitlement to judgment as a matter of law" (*Nesbitt v. Advanced Serv. Solutions*, 224 AD3d 841, 842-843 [2d Dept 2024]).

The only issue before the Court is whether Defendant Full Force launched a force or instrument of harm which caused the Plaintiff's injury. The concept of "launching a force or instrument of harm" requires affirmative action by the defendant that leaves the premises in a more dangerous condition than it was found. The mere passive omissions or nonfeasance of a defendant generally do not

constitute “launching a force or instrument of harm” under *Espinal* (see *Santos v. Deanco Services, Inc.*, 142 AD3d 137, 142 [2d Dept 2016]).

Without more, in partial opposition to Motion Sequence No. 1, Defendant Church, by counsel, merely argues that if the Court determines that a question of fact exists concerning whether the ice removal efforts employed at the church on January 9, 2022 created a hazardous condition or exacerbated the natural hazard created by the storm, then a corresponding question of fact exists as to whether Defendant Full Force launched a force or instrument of harm and assumed a duty of care to the Plaintiff. However, Defendant Church’s own witness attests, *inter alia*, to the following: that the services performed by Defendant Full Force on the subject walkway were accomplished in a good and workperson-like manner; and that Defendant Full Force did not do anything to the sidewalk which increased the hazard of the walkway as compared to the hazard originally posed by the natural condition of the subject walkway occasioned by the accumulation of sleet and frozen rain falling upon it in the morning hours of the winter storm (see NYSCEF Doc. No. 47 ¶ 10).

Also, speculative and conclusory in nature, and not supported by objective evidence and testimony, Plaintiff contends that Defendant Full Force’s act of dumping a concentrated pile of ice melt in a single spot while leaving the adjacent area of the walkway untreated and unsafe, actively exacerbated the existing snow and ice from the January 7, 2022 snowstorm. However, Plaintiff does not allege what affirmative action by Defendant Full Force left the premises in a more dangerous condition than it was found. Notwithstanding, Plaintiff described the ice melt as blue; yet Defendant Full Force’s witness testified that Defendant Full Force never used any type of ice melt for the 2021/2022 season that was blue (see, NYSCEF Doc. No. 35 p.16 lines 17-18). Accordingly, Defendant Full Force did not launch a force or instrument of harm which caused the Plaintiff’s injury.

Based on the foregoing, Defendant Full Force’s Motion for summary judgment in its favor as against Plaintiff is granted. For the same reason, Defendant Church’s crossclaim for common law indemnification as against Defendant Full Force is dismissed. As to Defendant Full Force’s contention that the contract between Defendant Full Force and Defendant Church does not include contractual indemnification language, Defendant Church does not dispute same. Accordingly, Defendant Church’s crossclaim for contractual indemnification as against Defendant Full Force is dismissed.

In light of the foregoing, it is hereby

ORDERED, that Defendant Full Force’s Motion Sequence No. 1 is GRANTED; and it is further

ORDERED, that the Complaint and all crossclaims, only as against Defendant Full Force, are DISMISSED; and it is further

ORDERED, that Defendant Church’s Motion Sequence No. 2 is DENIED; and it is further

ORDERED, that all remaining parties are to appear on September 9, 2026 at 9:15AM for purposes of a Settlement Conference.

The foregoing constitutes the Decision & Order of this Court.

Dated: New City, New York
July 13, 2026

E N T E R:

A handwritten signature in dark ink, appearing to read 'David Fried', written over a horizontal line.

HON. DAVID FRIED, A.J.S.C.
STATE OF NEW YORK
COUNTY OF ROCKLAND