

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1015

CA 09-00252

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PINE, AND GORSKI, JJ.

THOMAS VERLENI, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CITY OF JAMESTOWN, DEFENDANT,
RODNEY L. JOHNSON AND LINDA L. JOHNSON,
DEFENDANTS-RESPONDENTS.

FESSENDEN, LAUMER & DEANGELO, JAMESTOWN (J. KEVIN LAUMER OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

JAECKLE FLEISCHMANN & MUGEL, LLP, BUFFALO (DAVID G. BROCK OF COUNSEL),
FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Chautauqua County (Timothy J. Walker, A.J.), entered September 2, 2008 in a personal injury action. The order granted the motion of defendants Rodney L. Johnson and Linda L. Johnson for summary judgment dismissing the complaint against them.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is denied and the complaint against defendants Rodney L. Johnson and Linda L. Johnson is reinstated.

Memorandum: Plaintiff commenced this action seeking damages for injuries he sustained when he allegedly slipped and fell on ice on the sidewalk in front of the home of Rodney L. Johnson and Linda L. Johnson (defendants). We agree with plaintiff that Supreme Court erred in granting the motion of defendants seeking summary judgment dismissing the complaint against them on the ground that there was a storm in progress. In support of their motion, defendants submitted the deposition testimony of defendant husband in which he stated that there was "a light snowfall" and "a dusting of snow on the sidewalk" at the time of plaintiff's fall. That testimony and the remaining submissions of defendants in support of their motion are insufficient to satisfy their burden of "establishing as a matter of law that 'plaintiff's injuries [were] sustained as the result of an icy condition occurring during an ongoing storm or for a reasonable time thereafter' " (*Korthas v U.S. Foodservice, Inc.*, 61 AD3d 1407, 1408, quoting *Solazzo v New York City Tr. Auth.*, 6 NY3d 734, 735; see *Powell*

v MLG Hillside Assoc., 290 AD2d 345, 345-346).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court