IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROBERT E. HOLTZAPPLE and MARY HOLTZABLLE, h/w, *Plaintiffs* v. CYNTHIA K. DUNKLEBERGER d/b/a DUBOISTOWN CAFÉ, LLC f/k/a and d/b/a DUBOISTOWN CAFÉ AND DELI, and JOHN S. TEBBS and ROBIN J. TEBBS, Husband and Wife *Defendants*	CIVIL ACTON NO. 15 – 1,666 SUMMARY JUDGMENT

OPINION AND ORDER

Before the Court is the joint motion by Defendants for summary judgment in a slip and fall personal injury case based largely on the "hills and ridges" doctrine and notice as to premises conditions. The Court respectfully submits the following in support of its rulings.

FACTUAL BACKGROUND

This is a personal injury case arising from Plaintiff Robert Holtzapple slipping on ice outside the Duboistown Café on November 29, 2014 on his way into the establishment. Holtzapple testified that he fell between 7:30 and 8:30 a.m. Deposition of Robert E. Holtzapple, 7/6/16, ("Holtzapple dep."), at 34:6. Holtzapple testified that it was a cold and sunny day; it was not snowing, but a light dusting of snow covered the ground. Holtzapple dep. 36:8, 12, & 20; 48:22-24. The roads were clear and not icy or slick. Holtzapple dep. 36:8, 12, 20. Holtzapple walked on the cement along the front of the building until he was required to step onto the parking lot to go around planter or flower pot obstructing his path. Holtzapple testified in part that he fell on a localized patch of ice, described as black ice. Holtzapple dep. 58; & 48:22-24.

LEGAL STANDARDS

SUMMARY JUDGMENT

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. Keystone Freight Corp. v. Stricker, 31 A.3d 967, 971 (Pa. Super. 2011). A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. Keystone, 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. Id. (citing Young v. Pa. Dep't of Transp., 744 A.2d 1276, 1277 (Pa. 2000). "In determining the existence or non-existence of a genuine issue of a material fact, courts are bound to adhere to the rule of Nanty-Glo v. American Surety Co., 309 Pa. 236, 163 A. 523 (1932) which holds that a court may not summarily enter a judgment where the evidence depends upon oral testimony. Penn Ctr. House, Inc. v. Hoffman, 520 Pa. 171, 176, 553 A.2d 900, 903 (Pa. 1989).

With this standard in mind, the Court provides the following discussion.

DISCUSSION

The Defendants seek summary judgment on the grounds that Plaintiffs failed to adduce sufficient evidence to satisfy the requirements under the "hills and ridges" doctrine and the requirements for notice of the premises conditions. "The "hills and ridges" doctrine is a long standing and well entrenched legal principle that protects an owner or occupier of land from

liability for generally slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations." Morin v. Traveler's Rest Motel, Inc., 704 A.2d 1085, 1087 (Pa. Super. 1997), *citing*, Harmotta v. Bender, 601 A.2d 837 (1992); and Wentz v. Pennswood Apartments, 518 A.2d 314, 316 (Pa. 1991). However, this doctrine only applies to generally slippery conditions and not distinct patches of ice. Tonik v. Apex Garages, Inc., 275 A.2d 296, 298 (Pa. 1971); Williams v. Shultz, 240 A.2d 812, 813 (Pa. 1968). Specifically, our Pennsylvania Supreme Court has stated the following.

> Proof of "hills and ridges" is necessary only when it appears that the accident occurred at a time when general slippery conditions prevailed in the community, which is not the case here. See Williams v. Shultz, 429 Pa. 429, 240 A. 2d 812 (1968), and many supporting cases cited therein. Where, as here, a specific, localized patch of ice exists on a sidewalk otherwise free of ice and snow, the existence of "hills and ridges" need not be established. Tonik v. Apex Garages, Inc., 442 Pa. 373, 376, 275 A.2d 296, 298 (1971).

In the present case, issues of fact exist as to whether there were generally slippery conditions at the time of the fall that would require proof of hills and ridges. Holtzapple testified that it was sunny and not snowing, but a light dusting of snow covered the ground. Holtzapple dep. 36:8, 12, & 20; 48:22-24. He testified that the dusting of snow was there when he woke up that morning. Holtzapple dep. 36:4-8. He further testified that the roads were clear and specified that the roads were not icy or slick. Holtzapple dep. 36:8, 12, 20. At one point in his deposition, Holtzapple testified that the ice was a localized patch of ice. Holtzapple dep. 58.[1] As a result, the Court concludes that an issue of material fact exists as to whether there slippery conditions to require proof of hills and ridges or whether Holtzapple fell on a specific localized patch of ice that existed on the parking lot.

[1] While other parts of Holtzapple's testimony raise questions as to his testimony of a patch of ice, a resolution of that testimony is for the fact finder.

In addition, a material issue of fact exists as to whether the lack of a gutter on the front of the roof constituted a defect that makes the hills and ridges doctrine inapplicable. See, Casey v. Singer, 372 Pa. 284, 93 A.2d 470 (1953); Claytor v. Durham, 273 Pa. Super. 571, 417 A.2d 1196 (Pa. Super. 1980). A fact-finder could infer the existence of a defect (akin to a depression in a parking lot) arising from the lack of a gutter on the roof. Pictures reveal that snow could accumulate on the roof of the café. There was no gutter on the portion of that roof that fronts the building. Holtzapple fell near the front of the building on the side where the roof of the building has no gutter. The roof is pitched at an angle towards the parking lot where he fell. Deposition of Linde V. Engel, 7/7/16, at 41-42. Insurance documents described a picture taken January 23, 2015 as "melting snow is dripping off of this roof[.]" Deposition of Cythia Dunkleberger, 7/7/2016, 22:14-21, exhibit # 6. At the time of the fall, Holtzapple said something about the eves dripping. Deposition of Maria Elenea Meservey, 7/7/2016, exhibit #1. Material issues of fact exist as to inferences from this evidence.

As to notice, there are issues of fact as to whether there was constructive notice of the condition causing the fall. "In order to establish constructive notice, it was necessary to show that the defect existed for such a period of time that it could have been discovered and corrected through the exercise of reasonable care[.]" Murray v. Siegal, 413 Pa. 23, 27, 195 A.2d 790, 792 (Pa. 1963)(citations omitted). As our Supreme Court noted, where "the record clearly indicates that it had not snowed or rained for a period of at least five days prior to [the] fall, it is only reasonable to infer from such evidence that [the relevant party] had either actual or constructive notice of the existence of the icy condition of the sidewalk." Williams v. Shultz, 429 Pa. 429, 434 n.1, 240 A.2d 812, 814 (Pa. 1968)

In the present case, Plaintiff presented weather records indicating that only trace amounts of precipitation fell on the day of and day prior to the fall. Those records indicated that 5" of recordable precipitation fell on November 26, 2014 and 6/10" on the 27th. In addition, the weather records indicated that the temperature leading up to varied above and below the freezing point. Since there were only trace amounts of precipitation leading up to the day of the fall, the fact finder could find that ice existed for a sufficient length of time for constructive notice.

In addition, there are issues of fact as to constructive knowledge of the condition of the roof. There was no gutter on the front of the roof, raising inferences of constructive knowledge of the increased likelihood of ice formation in that area. Defendants are chargeable with knowledge of the simple laws of nature (see, e.g., Casey v. Singer, 372 Pa. 284, 289, 93 A.2d 470, 473 (Pa. 1953)), such as that snow starts to melt when temperatures rise above freezing, that melted snow can fall downward from an angled roof without a gutter, and that melted snow can refreeze into ice when temperature falls below freezing. Upon examination of the entire record in the light most favorable to the non-moving party, and resolving all doubts against the moving party, as this Court must, the Court concludes that there are issues of material fact for the jury.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this **15th** day of **March 2017**, for the foregoing reasons, it is ORDERED and DIRECTED that the Defendants' motion for summary judgment is DENIED.

BY THE COURT,

March 15, 2017
Date

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Richard A. Gray, J.

c: David F. Wilk, Esquire (for Plaintiff)
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