

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, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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FEIGE HEILBRUN,

Plaintiff,

DECISION and ORDER
(Mot. Seq. 4)

-against-

HORIZON GARDENS INC., ROVONA ESTATES LLC,
VAAD MOUNTAIN CONDOMINIUM VI AND
BENZION WEBERMAN

Index No. EF000557-2022

Defendants.

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HON. MARY ANNE SCATTARETICO-NABER, J.S.C.

The following electronically filed papers as documents numbered 84-96 and 103-106¹ were read and considered on the motion by Defendant, Horizon Gardens Inc. (“Defendant”), for an order pursuant to CPLR R 3212 granting Defendant summary judgment in its favor, dismissing Plaintiff, Feige Heilbrun’s (“Plaintiff”) complaint, together with such other and further relief as this Court may deem just and proper.²

Upon the foregoing papers, and after due deliberation and consideration, the Court finds as follows.

This is a personal injury action in which the Plaintiff alleges she slipped and fell on ice on property owned by Defendant, on February 26, 2021, at approximately 8:45 p.m. The action was commenced by the filing of a Summons and Verified Complaint with the Orange County Clerk’s Office on January 27, 2022. Defendant filed a Verified Answer on March 25, 2022. Plaintiff subsequently filed an Amended and Supplemental Verified Complaint and Defendant filed a

¹ The Court did not consider Plaintiff’s Sur Reply (NYSCEF Doc. No. 107) as it is impermissible pursuant to 22 NYCRR § 202.28. Further, Defendant’s Reply papers did not raise new arguments that were not set forth in its moving papers and were in response to the arguments raised by Plaintiff.

² The other named defendants have not appeared in this action and Plaintiff’s motion for a default judgment against said defendants was denied by the Court’s Decision and Order, dated September 8, 2023 (NYSCEF Doc. No. 93).

Verified Answer to Amended and Supplemental Verified Complaint ("Complaint") (NYSCEF Doc. Nos. 90, 91).

Plaintiff filed her Note of Issue on October 31, 2024.

Defendant was granted an extension of its deadline to file a summary judgment to June 6, 2025.

Defendant now moves for summary judgment on the ground that well settled law warrants dismissal of Plaintiff's Complaint because Plaintiff could not identify the cause of her fall. Plaintiff's Verified Bill of Particular alleges in pertinent part as follows:

5. The accident herein occurred at Rovna Ct & Chevron Rd foot path/walkway, Kiryas Joel, Monroe, County of Orange, State of New York.

6. The subject accident occurred when plaintiff slipped and fell as a result of ice and snow accumulation and slippery condition of the surface of said foot path/walkway at the aforesaid location, inadequate lighting and missing handrails. (NYSCEF Doc. No. 88).

However, at Plaintiff's deposition, she testified in relevant part as follows:

Q. Did you notice whether there was any snow on the ground on that pathway?

A. That pathway had no snow. The snow was on the other side. I didn't go on the snow. You know what I mean, this part of the rail had no snow, and this side did have snow.

Q. Were you walking on the side that did not have snow?

A. Yeah, I was walking on the side that did not have snow.

* * *

Now, can you tell me how did you actually trip and fall?

A. I don't know. I was walking comfortably and looking straight ahead and holding on the railway. Okay, the railway is a little shaky. But all of a sudden, I was on the floor.

Q. Did you ever see what caused you to trip and fall?

A. No. Ice, I think. Yeah, ice. Must have been some ice. I don't know. I just was on the floor.

Q. Well, do you specifically recall seeing ice at some point that caused you to fall?

A. No, no, no. I just slipped. I don't know. I was on the floor.

* * *

Q. Ma'am, I have one or two quick follow-up questions. After your

accident when you fell, did you look on the ground to see what had caused your fall?

A. I figured it was ice.

Q. But when you say you feel it was ice, do you recall seeing ice?

A. I don't remember.

(NYSCEF Doc. No. 94 at p. 24 lines 5-15; 28, lines 15-25; p. 29, line 2-7; p. 57, lines 20-25; p. 58, lines 2-4).

Plaintiff executed her deposition transcript before a notary public and did not make any changes to her testimony.

Summary judgment is a drastic remedy and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact (*Piccirillo v Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 N.Y.2d 361 [1974]). The papers on the motion should be scrutinized carefully in the light most favorable to the party opposing the relief (*Judice v. DeAngelo*, 272 AD2d 583 [2d Dept 2000]) and summary judgment is only appropriate where no material issues of fact exist between the parties (*Schultz v Von Voight*, 86 NY2d 865 [1995]).

The movant bears the initial burden of demonstrating its *prima facie* entitlement to summary judgment (*Pine Valley Center, LLC v Jacobs*, 237 A.D.3d 1115, 1117 [2d Dept 2025])(citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562)). Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted (*Anyanwu v Johnson*, 276 AD2d 572 [2d Dept. 2000]).

“In a slip-and-fall case, a plaintiff's inability to identify the cause of the fall is fatal to the cause of action because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation” (*Defino v Interlaken Owners, Inc.*, 125 AD3d 717, 717 [2d Dept 2015]; *Accord, Lee v International Preschools*, 170 AD3d 1091, 1091 [2d Dept 2019]).

Here, Defendant met its initial burden of demonstrating its *prima facie* entitlement to summary judgment through Plaintiff's deposition testimony.

It is clear from Plaintiff's deposition testimony that she did not know the cause of her fall and speculated that she fell on ice.

In opposition, Plaintiff fails to raise a triable issue of fact. Plaintiff submits, *inter alia*, her affirmation in which she states that she was confused by defense counsel's questioning, that she did not see what caused her to fall before she slipped and as she was on the ground, she vividly recalls observing a layer of white/clear ice underneath her which was the cause of her fall as well as the shaky handrail. Plaintiff further recalls that the patch of ice was at least 3 feet by 3 feet.

Plaintiff's affirmation does not clarify her deposition testimony but rather is diametrically opposed to her deposition testimony. Defense counsel asked Plaintiff whether she *ever saw* what caused her to trip and fall and Plaintiff replied "No. Ice, I think. Yeah, ice. Must have been some ice. I don't know. I just was on the floor." Plaintiff's speculation at her deposition as to what caused her fall is fatal to her action.

The Court finds that Plaintiff's affirmation in opposition is self-serving and presented to feign a factual issue to avoid the consequences of her earlier admission that she did not know what caused her fall (*Regina v Friedman*, 272 AD2d 461, 462 [2d Dept 2000]).

The parties' remaining contentions are either without merit or need not be reached in light of the Court's determination.

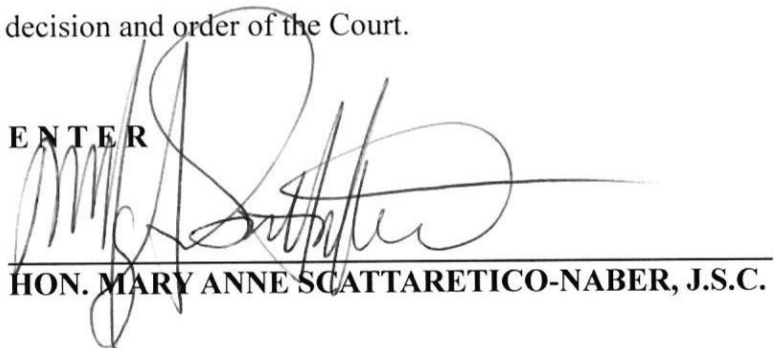
Accordingly, upon the foregoing, it is hereby

ORDERED, that defendant Horizon Gardens Inc.'s Motion for Summary Judgment in its favor is GRANTED and Plaintiff's Amended and Supplemental Verified Complaint is dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: October 14, 2026
Goshen, New York

ENTER


HON. MARY ANNE SCATTARETICO-NABER, J.S.C.

cc: All Counsel, via NYSCEF