

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14176
G/mv

_____AD3d_____

Argued - February 6, 2007

HOWARD MILLER, J.P.
ROBERT W. SCHMIDT
DAVID S. RITTER
DANIEL D. ANGIOLILLO, JJ.

2006-04211

DECISION & ORDER

Celal Akcelik, plaintiff-respondent, v Town of Islip,
appellant, County of Suffolk, defendant-respondent.

(Index No. 298/04)

Curtis, Vasile, Devine & McElhenny, Merrick, N.Y. (Michael J. Dorry of counsel),
for appellant.

Wallace, Witty, Frampton & Veltry, P.C., Brentwood, N.Y. (Carmine J. Goncalves
of counsel), for respondent Celal Akcelik.

Christine Malafi, County Attorney, Hauppauge, N.Y. (Anthony P. Moncayo of
counsel), for respondent County of Suffolk.

In an action to recover damages for personal injuries, the defendant Town of Islip
appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County
(Tanenbaum, J.), dated March 27, 2006, as denied its motion for summary judgment dismissing the
complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with one
bill of costs, and the motion for summary judgment dismissing the complaint and all cross claims
insofar as asserted as against the defendant Town of Islip is granted.

Where, as here, a municipality has enacted a prior written notice statute, it may not
be subjected to liability for personal injuries caused by an improperly maintained street unless either

March 6, 2007

Page 1.

AKCELIK v TOWN OF ISLIP

it has received prior written notice of the defect, or an exception to the prior written notice requirement applies (*see Amabile v City of Buffalo*, 93 NY2d 471, 473-474; *Wilkie v Town of Huntington*, 29 AD3d 898; *Lopez v G&J Rudolph Inc.*, 20 AD3d 511).

In this case, the Town of Islip made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating, through the affidavits of the Executive Assistants to the Town's Clerk and Commissioner of Public Works, that it had no prior written notice of the condition complained of (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Wilkie v Town of Huntington*, *supra*; *Lopez v G&J Rudolph Inc.*, *supra*). In opposition, the plaintiff failed to raise a triable issue of fact as to whether there was such prior written notice, or whether any exception to that requirement applies here. Contrary to the plaintiff's contention, the verbal telephonic complaint which was reduced to a complaint ticket did not satisfy the prior written notice requirement (*see Dalton v City of Saratoga Springs*, 12 AD3d 899, 901; *Cename v Town of Smithtown*, 303 AD2d 351).

The plaintiff's remaining contentions are without merit.

MILLER, J.P., SCHMIDT, RITTER and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court