

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

D19355
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_____AD3d_____

Argued - April 21, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2007-03715

DECISION & ORDER

Izabel Rodriguez, respondent, v City of Mount
Vernon, appellant, et al., defendants.

(Index No. 9049/04)

Helen M. Blackwood, Mount Vernon, N.Y. (Hina Sherwani of counsel), for
appellant.

Robert O. Corini, New Rochelle, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant City of Mount
Vernon appeals from an order of the Supreme Court, Westchester County (Nicolai, J.), entered April
6, 2007, which denied its motion for summary judgment dismissing the complaint insofar as asserted
against it.

ORDERED that the order is reversed, on the law, with costs, and the motion of the
defendant City of Mount Vernon for summary judgment dismissing the complaint insofar as asserted
against it is granted.

A municipality that has enacted a prior written notice law is excused from liability
absent proof of prior written notice or an exception thereto (*see Poirer v City of Schenectady*, 85
NY2d 310, 313; *Smith v Town of Brookhaven*, 45 AD3d 567). The Court of Appeals has recognized
two exceptions to this rule, “namely, where the locality created the defect or hazard through an
affirmative act of negligence and where a ‘special use’ confers a special benefit upon the locality”
(*Amabile v City of Buffalo*, 93 NY2d 471, 474; *see Delgado v County of Suffolk*, 40 AD3d 575, 575-
576). Here, the defendant City of Mount Vernon established its entitlement to judgment as a matter

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of law by demonstrating that it did not have prior written notice of the allegedly dangerous condition that purportedly caused the plaintiff's fall (*see Smith v Town of Brookhaven*, 45 AD3d at 568; *Jacobs v Village of Rockville Ctr.*, 41 AD3d 539, 540). In opposition, the plaintiff failed to raise a triable issue of fact. Under the circumstances of this case, we disagree with the plaintiff's contention that the City is estopped from claiming, as a defense, the absence of prior written notice to the proper statutory designee (*cf. Gorman v Town of Huntington*, 47 AD3d 30). Accordingly, the Supreme Court should have granted the City's motion for summary judgment dismissing the complaint insofar as asserted against it.

MASTRO, J.P., RIVERA, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court