

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

D20872
Y/hu

_____AD3d_____

Argued - October 6, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
HOWARD MILLER
RANDALL T. ENG, JJ.

2007-05502

DECISION & ORDER

Karen DiLeo, appellant, v Town/Village
of Harrison, respondent.

(Index No. 9304/05)

Brodsky & Peck, Harrison, N.Y. (Maria C. Corrao of counsel), for appellant.

Penino & Moynihan, LLP, White Plains, N.Y. (Vincent J. Aceste and Audrey D. Zwolski of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Colabella, J.), dated May 8, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured after falling over an allegedly defective storm drain at an intersection in the Town/Village of Harrison. The plaintiff claimed that there was also an inoperable streetlight at that location. The defendant moved for summary judgment on the ground, inter alia, that it had not received prior written notice of the allegedly defective storm drain as required by the Town/Village of Harrison Code, art. I, § 32-1. The Supreme Court granted the motion. We affirm.

The evidence submitted by the defendant established, prima facie, that the defendant did not receive prior written notice of the allegedly defective storm drain and/or the surrounding pavement (*see* Town/Village of Harrison Code, art. I, § 32-1; General Municipal Law § 50-e(4));

October 28, 2008

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Amable v City of Buffalo, 93 NY2d 471, 474; *Boddie v City of New Rochelle*, 233 AD2d 284; see also *Patti v Town of N. Hempstead*, 23 AD3d 362, 363; *Betzold v Town of Babylon*, 18 AD3d 787). The evidence submitted by the plaintiff in opposition failed to raise an issue of fact as to whether the defendant received such prior written notice or whether an exception to the prior written notice requirement applied (see *Patti v Town of N. Hempstead*, 23 AD3d at 363; *Betzold v Town of Babylon*, 18 AD3d at 787; *Boddie v City of New Rochelle*, 233 AD2d at 284). Further, the Town did not have a duty to provide street lighting for the area where the plaintiff allegedly fell (see *Greenberg v McLaughlin*, 242 AD2d 603, 603-604; *Abbott v County of Nassau*, 223 AD2d 662; *Bauer v Town of Hempstead*, 143 AD2d 793, 794).

RIVERA, J.P., LIFSON, MILLER and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court