

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

D21749
G/nl

_____AD3d_____

Argued - December 1, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2007-09251

DECISION & ORDER

Mitchel D. Ramos, respondent, v Alicia Court Enterprises, Inc., et al., defendants; County of Westchester, nonparty-appellant.

(Index No. 98-398)

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and Justin R. Adin of counsel), for nonparty-appellant.

Leslie G. Abele, Elmsford, N.Y., for respondent.

In an action to recover damages for personal injuries, nonparty County of Westchester appeals, as limited by its brief, from so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered September 11, 2007, as granted those branches of the plaintiff's motion which were to vacate its "assertion of a lien" on certain settlement proceeds, and its suspension of the plaintiff's benefits.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly vacated the nonparty County of Westchester's "assertion of a lien" on the proceeds of a settlement of this personal injury action between the plaintiff and the defendants. Contrary to the County's contention, its exclusive remedy to recover moneys paid to the plaintiff pursuant to General Municipal Law § 207-c was a direct action against the tortfeasor, and not a lien on the plaintiff's recovery (*see City of Buffalo v Maggio*, 21 NY2d 1017; *Musgrove v American Protection Ins. Co.*, 32 AD3d 916; *Foy v Florczuk*, 51 AD2d 534). The Supreme Court also properly vacated the County's suspension of the plaintiff's benefits without affording him a hearing because the right of a disabled officer to receive disability payments pursuant to General

Municipal Law § 207-c constitutes “a property interest giving rise to procedural due process protection, under the Fourteenth Amendment, before those payments are terminated” (*Matter of Park v Kapica*, 8 NY3d 302, 310).

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

2007-09251

DECISION & ORDER ON MOTION

Mitchel D. Ramos, respondent, v Alicia Court Enterprises, Inc., et al., defendants; County of Westchester, nonparty-appellant.

(Index No. 98-398)

Motion by the respondent on an appeal from an order of the Supreme Court, Westchester County, entered September 11, 2007, inter alia, to strike the record on appeal and the nonparty-appellant’s brief. By decision and order on motion of this Court dated June 16, 2008, that branch of the motion which is to strike the record on appeal and the nonparty-appellant’s brief was held in abeyance and referred to the panel of Justices hearing the appeal for a determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the branch of the motion which is to strike the record on appeal and the nonparty-appellant’s brief is denied.

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court