

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

D24403
H/kmg

_____AD3d_____

Argued - May 21, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-10789

DECISION & ORDER

Jeff A. Grippe, et al., plaintiffs-respondents, v Margaret Wolf, et al., defendants-respondents, City of White Plains, appellant.

(Index No. 13263/06)

Joseph A. Maria, P.C., White Plains, N.Y. (Frances D. Marinelli and Edward A. Frey of counsel), for appellant.

Sullivan Papain Block McGrath & Cannavo P.C., New York, N.Y. (Thomas J. McManus and Stephen C. Glasser of counsel), for plaintiffs-respondents.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and Thomas G. Gardiner of counsel), for defendant-respondent County of Westchester.

In an action to recover damages for personal injuries, etc., the defendant City of White Plains appeals, as limited by its brief, from so much of an order of the Supreme Court, Westchester County (Liebowitz, J.), entered November 6, 2008, 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, the appellant's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted; and it is further,

September 29, 2009

Page 1.

GRIPPE v WOLF

ORDERED that one bill of costs is awarded to the appellant, payable by the respondents appearing separately and filing separate briefs.

The Supreme Court improperly denied the appellant's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. The appellant established, prima facie, that its designation of a bike route on the road where the accident occurred was not a proximate cause of the accident (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562; *Fowler v Sammut*, 259 AD2d 516). In opposition, the plaintiffs failed to raise a triable issue of fact as to whether any alleged defect resulting from the appellant's designation of the bike route was a proximate cause of the injuries sustained by the plaintiff Jeff A. Grippe (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d at 562; *Fowler v Sammut*, 259 AD2d at 517; *see also Resource Fin. v National Cas. Co.*, 219 AD2d 627, 628).

In light of our determination, the parties' remaining contentions have been rendered academic.

RIVERA, J.P., FLORIO, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court