

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

D36132
T/hu

_____AD3d_____

Submitted - September 14, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
ROBERT J. MILLER, JJ.

2011-05376

DECISION & ORDER

Rose Albano, appellant, v Suffolk County, et al.,
respondents.

(Index No. 1220/08)

Harmon, Linder, & Rogowsky, New York, N.Y. (Mitchell Dranow of counsel), for
appellant.

Dennis M. Cohen, County Attorney, Hauppauge, N.Y. (Diana T. Bishop of counsel),
for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Suffolk County (Whelan, J.), dated December 14, 2010, which granted
the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff alleged that, while attending a graduation ceremony at the defendant
Suffolk County Community College (hereinafter the College), she tripped and fell on a defective
condition on the campus grounds. The plaintiff commenced this action to recover damages for
personal injuries against the College and Suffolk County. The defendants moved for summary
judgment dismissing the complaint on the ground that they had no prior written notice of the alleged
defect as required by Suffolk County Charter § C8-2A. "A municipality that has adopted a 'prior
written notice law' cannot be held liable for a defect within the scope of the law absent the requisite
written notice, unless an exception to the requirement applies" (*Forbes v City of New York*, 85 AD3d

October 10, 2012

Page 1.

ALBANO v SUFFOLK COUNTY

1106, 1107; *see Poirier v City of Schnectady*, 85 NY2d 310; *Hanover Ins. Co. v Town of Pawling*, 94 AD3d 1055, *lv denied* _____NY3d_____, 2012 NY Slip Op 83576 [2012]; *Abano v Suffolk County Community Coll.*, 66 AD3d 719). “The only two recognized exceptions to a prior written notice requirement are the municipality’s affirmative creation of a defect or where the defect is created by the municipality’s special use of the property” (*Forbes v City of New York*, 85 AD3d at 1107; *see Amabile v City of Buffalo*, 93 NY2d 471, 474).

Here, the defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that they did not have prior written notice of the alleged dangerous condition, and that it was located in an area subject to the prior written notice provisions of Suffolk County Charter § C8-2A (*see Abano v Suffolk County Community Coll.*, 66 AD3d at 719; *cf. Balsan v County of Suffolk*, 19 AD3d 342). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the defendants received prior written notice, or whether either of the recognized exceptions to the prior written notice requirement applied (*see Hanover Ins. Co. v Town of Pawling*, 94 AD3d at 1056; *Forbes v City of New York*, 85 AD3d at 1107). Accordingly, the Supreme Court properly granted the County’s motion.

The plaintiff’s contention that the prior written notice law does not apply because, in light of particular characteristics of the subject area, it does not fall within certain specific categories enumerated in section C8-2A of the Suffolk County Charter, is improperly raised for the first time on appeal and, therefore, is not properly before this Court.

The plaintiff’s remaining contentions are without merit.

ANGIOLILLO, J.P., DICKERSON, BELEN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court