

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

D55155
L/htr

_____AD3d_____

Argued - December 8, 2017

WILLIAM F. MASTRO, J.P.
SHERI S. ROMAN
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2016-10190

DECISION & ORDER

Nicholas Casciano, respondent, v Town/Village of
Harrison, defendant, New York Bituminous Products
Corporation, appellant.

(Index No. 59966/14)

Lori D. Fishman (Carol R. Finocchio, New York, NY, of counsel), for appellant.

Zalman Schnurman & Miner, P.C., New York, NY (Marc H. Miner of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendant New York
Bituminous Products Corporation appeals from an order of the Supreme Court, Westchester County
(Joan B. Lefkowitz, J.), dated September 6, 2016, which denied its motion for summary judgment
dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiff alleges that he was injured when he slipped and fell on ice on a roadway
in the vicinity of his residence in Harrison, New York. He commenced this action against the
defendant New York Bituminous Products Corporation (hereinafter NYBPC) and another defendant,
alleging, inter alia, that NYBPC negligently created the condition which caused his fall by
performing defective road work. NYBPC moved for summary judgment dismissing the complaint
insofar as asserted against it, and the Supreme Court denied the motion. NYBPC appeals.

Contrary to NYBPC's contention, the evidence submitted in support of its motion
failed to establish, prima facie, that the work it performed on the roadway did not cause or contribute
to the condition that resulted in the plaintiff's alleged injuries (*see generally Alvarez v Prospect*

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Hosp., 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562). Since NYBPC failed to establish its prima facie entitlement to judgment as a matter of law, the motion was properly denied without regard to the sufficiency of the plaintiff's opposition papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

MASTRO, J.P., ROMAN, SGROI and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court