

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

162

CA 17-00823

PRESENT: CENTRA, J.P., CARNI, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

KAREN A. TRACY, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO, DEFENDANT-APPELLANT.

TIMOTHY A. BALL, CORPORATION COUNSEL, BUFFALO (CHRISTOPHER R. POOLE OF COUNSEL), FOR DEFENDANT-APPELLANT.

CHIACCHIA & FLEMING, LLP, HAMBURG (DANIEL J. CHIACCHIA OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Catherine R. Nugent Panepinto, J.), entered January 12, 2017. The order denied defendant's motion for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the complaint is dismissed.

Memorandum: Plaintiff commenced this action to recover damages that she allegedly sustained in a motor vehicle accident caused by potholes. We agree with defendant that Supreme Court erred in denying its motion for summary judgment dismissing the complaint. Defendant established that it lacked prior written notice of a defective or unsafe condition in the road, and plaintiff failed to meet its burden of demonstrating that an exception to the general rule is applicable (*see Malek v Village of Depew*, – AD3d –, –, 2017 NY Slip Op 08998 [4th Dept 2017]). Contrary to plaintiff's contention, it is well established that "verbal or telephonic communication to a municipal body that is reduced to writing [does not] satisfy a prior written notice requirement" (*Gorman v Town of Huntington*, 12 NY3d 275, 280 [2009]).

Entered: February 2, 2018

Mark W. Bennett
Clerk of the Court