

Zubiller v County of Suffolk

2008 NY Slip Op 31163(U)

April 17, 2008

Supreme Court, Suffolk County

Docket Number: 0024225/2007

Judge: John J.J. Jones

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SHORT FORM ORDER

INDEX NO.: 0024225/2007
SUBMIT DATE: 1/30/2008
MTN. SEQ.#: 001; 002

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 SUFFOLK COUNTY

Present:

HON. JOHN J.J. JONES, JR.
Justice

MOTION DATE: 1/2/2008
MOTION NO.: 001 - MG
002 - XMG; CASEDISP

-----X
DANIELLE ZUBILLER,

Plaintiff,

-against-

COUNTY OF SUFFOLK, TOWN OF ISLIP, and
the LONG ISLAND MARITIME MUSEUM,

Defendants.
-----X

SIBEN & SIBEN, LLP
By: Richard F. Simmons, Esq.
Attys. for Plaintiff
90 East Main Street
Bay Shore, NY 11706

CHRISTINE MALAFI
Suffolk County Attorney
By: Marcia J. Lynn
By: Susan J. Flynn
Assistant County Attorneys
Attys. for Defendants
*County of Suffolk and The Long Island
Maritime Museum*
H. Lee Dennison Building
P.O. Box 6100
100 Veterans Memorial Highway
Hauppauge, NY 11788-0099

ZAKLUKIEWICZ, PUZO & MORRISSEY, LLP
By: William E. Morrissey, Esq.
Attys. for Defendant
Town of Islip
2701 Sunrise Highway, Suite 2
Islip Terrace, NY 11752

Upon the following papers numbered 1 to 26 read on this motion and cross-motion for dismissal of the complaint; Notice of Motion/Order to Show Cause and supporting papers 1-7; Notice of Cross Motion and supporting papers 8-13; Answering Affidavits and

supporting papers 14-21 ; Replying Affidavits and supporting papers 22-23; 24-26 ; Other _____; it is

ORDERED that this motion by defendants, County of Suffolk and The Long Island Maritime Museum, and cross-motion by defendant, Town of Islip, for an order dismissing the complaint of plaintiff, Danielle Zubiller, against them pursuant to CPLR 3211 (a) (7) are granted and the complaint is hereby dismissed.

Plaintiff commenced this action to recover damages as the result of a trip and fall on October 27, 2006 by a paved area approximately 68 feet north of the entrance leading to the Long Island Maritime Museum in West Sayville, County of Suffolk, New York. In her notice of claim served upon the municipalities, plaintiff claimed that “she was caused to ‘trip and fall’ as a result of a broken, cracked, uneven, depressed and irregular sidewalk which was improperly and inadequately illuminated so as to constitute a defective and dangerous condition.” Photographs of site show an irregularity in the paved edge of the roadway leading to parking areas outside the fence-in museum. It is the assertion of the County that plaintiff’s failure to plead and prove that the municipality had prior written notice of the defect requires dismissal of the complaint. The County asserts that dismissal is also warranted against the Long Island Maritime Museum, a licensee of the County for the purpose of operating a museum within the County park, because plaintiff claims to have fallen on a public roadway that serves as an entrance into the public park. Under the terms of the license agreement, the County agreed “to maintain the lawns, shrubs and grounds of the Museum Facility and to keep all parking areas, roads and pathways on the designated Museum Facility free of rubbish, debris, ice and snow.” The Town of Islip has cross-moved for dismissal on the ground that the County, not the Town, owns and maintains the park and the roadways within the park. Plaintiff has opposed both applications.

The Charter of the County of Suffolk, Article VIII, §C8-2 (A) (2) (i), provides, in pertinent part, as amended in 2004, as follows:

. . . no civil action shall be maintained against Suffolk County or any of its departments, agencies, offices, districts, boards, commissions or subdivisions for damages or injuries to a person or property sustained by reason of any (a) highways; (b) roads; (c) streets; (d) parking lots and parking fields; (e) bridges; (f) grade separation structures; (g) culverts; (h) bulkheads; (l) tide gates; (j) revetments; (k) locks; (l) jetties; (m) piers; (n) docks; (o) fencing; (p) streetlighting; (q) drains and drainage structures; (r) sidewalks; (s) walkways; (t) boardwalks; (u) crosswalks and underpasses; (v) sewers; (w)

manholes; (x) curbs; (v) gutters; (z) trees and tree limbs; (aa) street markings; (bb) traffic signs, signals or traffic control devices; (cc) step, steps, stairs and stairways; (dd) runways; (ee) taxiways; (ff) ramps; (gg) tie-down areas; (hh) access roads; (ii) fire roads and fire lanes; (jj) pathways; (kk) guide rails; (ll) buildings or other property and lands or any tree, bush, vegetation, appurtenance or structure in near proximity or attached to or necessary for the functioning of items (a) through (r) identified above, under the jurisdiction of the County, on account of that structure or thing enumerated above, in whole or in part, allegedly being in a defective condition, out of repair, unsafe, dangerous or obstructed or in consequence of the existence of snow or ice thereon, unless the County has received written notice within a reasonable time before said injury or property damage was sustained, that the item(s) identified in (a) through, (ll) above, or any tree, bush, vegetation, appurtenance or structure in near proximity or attached to or necessary for the functioning of items (a) through (ll) identified above allegedly causing such injury was in a defective, out of repair, unsafe, dangerous or obstructed condition . . . Such written notice shall specify the particular place and nature of such defective, unsafe, dangerous, or obstructed condition or the particular location of the snow or ice. Such notice shall be made in writing by certified or registered mail to the Clerk of the Suffolk County Legislature, who shall forward a copy to the County Attorney.

The County submitted the affidavit of Renee Ortiz, the Chief Deputy Clerk of the Suffolk County Legislature whose duties include the maintenance of records of all written complaints concerning alleged defects on County-owned property. It is averred that a search of records revealed that the Clerk of the Suffolk County Legislature did not receive any written notice or complaints prior to October 27, 2006 concerning the driveway entrance to the Museum where the plaintiff claims to have fallen. The County also submitted the affidavit of Richard Bloch, an investigator in the office of the County Attorney, who searched the records and found no written notice or complaints concerning the alleged defective condition of the driveway entrance to the museum for the time period preceding plaintiff's accident.

In support of its cross-motion, the Town of Islip submitted the affidavit of Greg Dawson, the Town Parks Director, in which he avers that the park in which the Long

Island Maritime Museum is located is owned and maintained by the County, and that the Town performs no maintenance at the location.

Here, the defect complained of by the plaintiff in the County park is one that is subject to the written notice requirements, and the County has established that it had no prior written notice of the condition that allegedly caused the plaintiff to fall. Moreover, the plaintiff does not allege that the County committed any act which would constitute affirmative negligence. Under the circumstances, this Court is constrained to dismiss the complaint in its entirety (*see Ganzenmuller v Incorporated Vill. of Port Jefferson*, 18 AD3d 703, 795 NYS2d 744 [2d Dept 2005]; *see also Fiordalisi v Town of Huntington*, 275 AD2d 299, 712 NYS2d 403 [2d Dept 2000]).

DATED: _____

17 April 2008

HON. JOHN J. JONES, JR.

J.S.C.

CHECK ONE: FINAL DISPOSITION

NON-FINAL DISPOSITION