

**Sternberg v Interfaith Nutrition Network, Inc.**

2016 NY Slip Op 33194(U)

April 19, 2016

Supreme Court, Nassau County

Docket Number: Index No. 607777/2015

Judge: Julianne T. Capetola

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court of the State of New York held in and for the County of Nassau, 100 Supreme Court Drive, Mineola, New York, on the 20<sup>th</sup> day of April 2016

P R E S E N T:

HON. JULIANNE T. CAPETOLA  
Justice of the Supreme Court

-----X

KORAH STERNBERG,

Plaintiff,

- against -

THE INTERFAITH NUTRITION NETWORK, INC.,  
VILLAGE OF HEMPSTEAD, TOWN OF  
HEMPSTEAD, and COUNTY OF NASSAU,  
Defendants.

-----X

The following papers were read on this Motion:

- Defendant Incorporated Village of Hempstead's Notice of Motion and Supporting Documents
- Plaintiff's Affirmation in Opposition
- Defendant Town of Hempstead's Notice of Motion and Supporting Documents
- Plaintiff's Affirmation in Opposition
- Defendant Incorporated Village of Hempstead's Reply

**DECISION AND ORDER ON MOTION**

Index No: 607777/2015  
Motion Sequence: 002, 003



Defendants Incorporated Village of Hempstead (hereinafter referred to as the "Village") and Town of Hempstead (hereinafter referred to as the "Town") in this personal injury action have each moved by notice of motion for an order pursuant to CPLR §3212 granting summary judgment and dismissal of the complaint as against them. Plaintiff has opposed both motions, and The Village submitted reply papers. No papers were received from any other party, and the motions were deemed submitted April 18, 2016.

Plaintiff allegedly sustained injuries as a result of a trip and fall on a sidewalk on or about November 5, 2014. The County argues that the sidewalk in question is not within their jurisdiction, and, in any event, there is no record of any prior written notice of any defective condition of the sidewalk as required by the Nassau County Administrative Code in order for liability to be imposed.

CPLR §3212(b) states, in relevant part, that a motion for summary judgment shall be granted "if, upon all the papers and proof submitted, the cause of action or defense shall

be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party”.

“The standards regarding summary judgment motions are familiar and fundamental. The party moving for summary judgment ‘bears the initial burden of making a prima facie showing of its entitlement to judgment as a matter of law’ (*Holtz v Niagara Mohawk Power Corp.*, 147 A.D.2d 857, 858). Once such a showing has been established, the ‘burden is shifted to the opposing party to come forward with proof in evidentiary form to show the existence of genuine triable issues of fact’ (*Mahar v Mahar*, 111 A.D.2d 501, 502; *see also, Ferber v Sterndent Corp.*, 51 N.Y.2d 782; *Cusano v General Elec. Corp.*, 111 A.D.2d 557). General conclusory statements, expressions of hope, and repetition of the allegations in the pleadings do not constitute evidentiary proof substantiating the party's claim and, therefore, are insufficient to defeat a summary judgment motion”. *Fresh Meadows Country Club v. Lake Success*, 158 A.D.2d 581 (2d. Dept. 1990).

Defendant Village argues that, pursuant to Hempstead Town code Section 116-1(B) and (E) they are not liable to Plaintiff for any injuries sustained.

Hempstead Town Code § 116 reads, in relevant part:

“B. Duties of the adjacent owner and occupant. The owner and the occupant of any real property shall keep the adjacent sidewalk area in good and safe repair and free from defects, weeds, litter, rubbish, garbage and obstructions of every kind . . .

E. Responsibilities of the owner and occupant in regard to a portion of the public roadway. In addition to the responsibilities described above, the owner and the occupant of real property shall also keep the area adjacent to the sidewalk area up to a distance of 18 inches distant into the public roadway from the face of the curb, or the curblines as previously described, free from weeds, litter, rubbish and garbage of every kind. Any such weeds, litter, rubbish or garbage shall be properly disposed of pursuant to the requirements of this Code”.

Plaintiff argues that inasmuch as discovery has not been completed, the instant motion is premature, however Plaintiff has failed to proffer an evidentiary basis as to how discovery may reveal or lead to any relevant evidence, or that facts not already made available to Plaintiff by The Village such that the instant motion could be found to be premature. *See Giovanniello v E.W. Howell Co., LLC*, 104 A.D.3d 812 (2d. Dept 2013).

Plaintiff has failed to provide “proof so as to establish either prior written notice or evidence that the condition was caused or created by the town and thereby raise a triable issue of fact”, or allege that such proof is discoverable but has not yet been provided. *O'Rourke v. Town of Smithtown*, 129 A.D.2d 570 (2d. Dept. 1987). The affidavits submitted in support of The Village’s motion from Patricia Perez and Amare M. Woldekerkos are sufficient to demonstrate that no such notice was given, and that no work had been done by The Village in or about the area for a period of at least five years. Additionally, no other party has opposed the motion.

Defendant Town argues that, pursuant to Chapter 6 of the Code of the Town of Hempstead, they are exempt from liability as they received no prior written notice of any defect or condition as required.

Hempstead Town Code § 6-3 reads as follows:

“No civil action shall be maintained against the Town of Hempstead for injuries or damages to persons or property sustained by reason of any defect or obstruction whatsoever in its traffic signs, sidewalks, walkways, footpaths or bicycle pathways or for injuries or damages to persons or property sustained by reason of any defect or obstruction in its traffic signs, sidewalks, walkways, footpaths or bicycle pathways or in consequence of the existence of snow or ice upon any of its traffic signs, sidewalks, walkways, footpaths or bicycle pathways unless said traffic signs, sidewalks, walkways, footpaths or bicycle pathways, no matter where situated, have been constructed or are maintained by the Town of Hempstead or the Commissioner of Highways pursuant to statute and written notice of, by the witness to, said defect or obstruction causing the injuries or damages was actually served upon the Town Clerk or Town Commissioner of Highways in accordance with § 6-4 hereof, nor shall any action be maintained for injuries or damages to persons or property sustained by reason of any defect or obstruction or in consequence of the existence of snow or ice unless such written notice thereof was actually served upon the Town Clerk or Town Commissioner of Highways in accordance with § 6-4 hereof and there was a failure or neglect to cause the particular defect to be remedied or the obstruction of the snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice”.

As with The Village, Plaintiff has argued that The Town’s motion is premature for the same reasons. Plaintiff has again failed to proffer an evidentiary basis as to how

discovery may reveal or lead to any relevant evidence, or that facts not already made available to Plaintiff by The Town such that the instant motion could be found to be premature. *See Giovanniello, supra*. Plaintiff has failed to provide “proof so as to establish either prior written notice or evidence that the condition was caused or created by the town and thereby raise a triable issue of fact”, or allege that such proof is discoverable but has not yet been provided. *O'Rourke, supra*. The affidavit submitted in support of The Town’s motion from Sharon Sweeny is sufficient to demonstrate that no such notice was given, and that no work had been done by The Town in or about the area for a period of at least five years. Additionally, no other party has opposed the motion:

Accordingly, it is hereby:

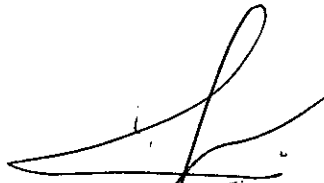
ORDERED, that Defendant Incorporated Village of Hempstead’s motion is hereby granted in its entirety and the complaint filed under Index #607777/2015 is dismissed as against Defendant Incorporated Village of Hempstead; and it is further

ORDERED, that Defendant Town of Hempstead’s motion is hereby granted in its entirety and the complaint filed under Index #607777/2015 is dismissed as against Defendant Town of Hempstead.

This constitutes the decision and order of the Court.

Dated: 4/19/16

ENTER



---

HON. JULIANNE T. CAPETOLA  
J.S.C.

**ENTERED**

APR 22 2016

NASSAU COUNTY  
COUNTY CLERK'S OFFICE