

<b>Faulknor v Gina's Trucking Inc.</b>
2018 NY Slip Op 34412(U)
June 15, 2018
Supreme Court, Westchester County
Docket Number: Index No. 62389/2015
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
**DIANA FAULKNER,**

**Plaintiff,**

**-against-**

**DECISION & ORDER  
Index No. 62389/2015  
Sequence Nos. 6&7**

**GINA'S TRUCKING INC. and RORY J. JENKINS,  
COUNTY OF WESTCHESTER, VILLAGE OF  
CROTON ON HUDSON, AND TOWN OF  
CORTLANDT,**

**Defendants.**

-----X  
**WOOD, J.**

The following papers were read and considered in connection with the Village of Croton on Hudson ("the Village") motion for summary judgment (Seq 6), and the County of Westchester ("County") motion for summary judgment (Seq 7):

- Village's Notice of Motion, Counsel's Affirmation, Exhibits, Memorandum of Law.
- Plaintiff's Counsel's Affirmation in Opposition, Exhibits.
- Village's Counsel's Reply Affirmation, Exhibit.
- County's Notice of Motion, Counsel's Affirmation, Exhibits.
- Plaintiff's Counsel's Affirmation in Opposition, Exhibit.
- County's Counsel's Reply Affirmation, Exhibit.

This action arises from a motor vehicle accident on July 7, 2015, wherein plaintiff/pedestrian was hit by defendants' tractor trailer as she attempted to cross the entrance

ramp of Route 9 South at its intersection with Croton Point Avenue in the County of Westchester.

On March 7, 2016, this court denied defendants' Gina's Trucking, Inc. and Rory J. Jenkins motion for summary judgment finding that there was a triable issue of fact as to the cause of the subject accident.

As for the County's motion for summary judgment, plaintiff has acknowledged that the County is not responsible for the subject accident based upon the inter-municipal agreement that transferred Croton Point Avenue from the County to the Village of Croton on Hudson. As such, plaintiff has agreed to discontinue her cause against the County pursuant to a Stipulation of Discontinuance. The County contends that because said stipulation of discontinuance has not yet been signed by the other parties to this litigation, the County is not withdrawing its motion for summary judgment to dismiss any and all cross-claims against it. Based upon the record, including the stipulation, and the fact that the County appears not to be responsible for the subject accident, the court grants the County's motion for summary judgment.

Now, before this court, the Village brings an application for an order pursuant to CPLR 3212 dismissing the complaint and any cross claims against it, inasmuch as pursuant to VTL §1621(a) and 1684, the roadway where plaintiff's accident occurred was controlled by the State of New York; and plaintiff's negligent conduct in stepping into the side of a motor vehicle was the sole cause of the accident and the injuries which she alleges. Plaintiff opposes the motion.

After the Village's instant motion and plaintiff's opposition papers were submitted and filed, the Second Department by Decision & Order dated February 14, 2018, reversed this court's ruling, and found that plaintiff was indeed the sole proximate cause of the accident, and

that plaintiff failed to see what was there to be seen and walked into the path of the rear of the tractor-trailer.

Upon the foregoing papers, the motion is decided as follows:

It is well settled that a proponent of a summary judgment motion must make a “prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is “required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion” (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320,324 [1986]).

In light of the Appellate Division’s decision; and the evidence that the Village is not responsible for laying and or maintaining roadway markings, pedestrian crosswalks, stationing crossing guards, or erecting and/or maintaining traffic control devices directing either

pedestrian or vehicular travel along Route 9 South or at its crossing with any Village roadway including Croton Point Avenue; and that the location of plaintiff's accident on the entrance ramp to Route 9 appears to be statutorily controlled by the State of New York, not the Village pursuant to New York Vehicle and Traffic Law Section 1621(a)(1)(5) and 1684; the Village's motion for summary judgment is granted.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

NOW, therefore, it is hereby

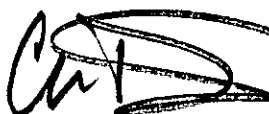
ORDERED, that the Village's motion for summary judgment (Seq 6) is **granted**, and all cross claims against it are dismissed; and it is further

ORDERED, that the County's motion for summary judgment (Seq 7) is **granted**, and all cross claims against it are dismissed; and it is further

ORDERED, that in light of the Appellate Division decision, and under these circumstances, the complaint is dismissed.

The Clerk shall mark his records accordingly.

**Dated: June 15, 2018**  
**White Plains, New York**



**HON. CHARLES D. WOOD**  
**Justice of the Supreme Court**

To: All Parties by NYSCEF