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| Librett v Town of N. Hempstead |
| 2019 NY Slip Op 34324(U) |
| June 4, 2019 |
| Supreme Court, Nassau County |
| Docket Number: Index No. 600716/19 |
| Judge: Jeffrey S. Brown |
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SHORT FORM ORDER

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

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X **TRIAL/IAS PART 11**
JANE LIBRETT,

Plaintiff,

-against-

**INDEX # 600716/19
Mot. Seq. 1
Mot. Date 4.17.19
Submit Date 5.17.19**

**TOWN OF NORTH HEMPSTEAD, COUNTY OF NASSAU,
COUNTY OF NASSAU DEPARTMENT OF PUBLIC
WORKS and THE TOWN OF NORTH HEMPSTEAD
HIGHWAY DEPARTMENT,**

Defendants.

-----X

| The following papers were read on this motion | Documents Numbered |
|---|--------------------|
| Notice of Motion, Cross Motion, Affidavits, Affirmations, Exhibits..... | 2 |
| Opposition Papers..... | 17 |
| Reply Papers..... | 22 |

Defendants County of Nassau and County of Nassau Department of Public Works move pursuant to CPLR 3211(a) (1) and (7) to dismiss the complaint as against them or in the alternative convert this motion to one for summary judgment.

Before this court is a personal injury trip and fall action. Plaintiff is alleged to have fallen on the sidewalk in front of 33 Van Nostrand Avenue, Roslyn, New York on October 25, 2017.

The moving defendants raise numerous arguments. First, they argue that they owe no duty to the plaintiff because the County does not own or otherwise control the roadway or have any interest in the adjacent property. Therefore, the County of Nassau does not have any jurisdiction over the location where plaintiff is alleged to have fallen. Attached to the motion papers is a map publicly available on the County's website which identifies County owned roads

in the area. The map shows that Van Nostrand Avenue is not a County owned roadway. Further, attached are Nassau County Assessment Records, which indicate that the owner of the adjacent real property is recorded as Hakakian Cyrus & Solaiman.

Further, the County argues that it cannot be held liable for a defect in a sidewalk without written notice. In support of this argument, the County submits an affidavit from Veronica Cox who is assigned to the Bureau of Claims and Investigations in the Office of the Nassau County Attorney. She maintains the files containing notices of claim and defects. A personal search by her of the records of the area in question fails to reveal any prior notices of claim or prior written complaints involving a dangerous or defective condition at the subject location for a period of six years prior to the date in question. Also attached is an affidavit from Anthony Esposito, a Landscape Architect with the Nassau County Department of Public Works. He is familiar with the roadways and sidewalks under the jurisdiction of the County of Nassau. He personally searched the records of the Department of Public Works which include contracts, inspections, sidewalk complaints and repair records kept by his department. As a result of a review of the records, he determined that the County did not perform or contract any work related to the subject location or perform any repairs at the subject location for a period of six years prior to the date in question, October 25, 2017.

Finally, counsel argues that the Nassau County Department of Public Works is an administrative arm of the County of Nassau and as a result, does not have the capacity to sue or be sued.

In opposition, counsel for plaintiff submits an affidavit from his client, Jane Librett, wherein she states that she fell in front of 33 Van Nostrand Avenue on a raised, cracked, broken and uneven sidewalk. She states that there has been no discovery conducted and, as a result, there has been no determination regarding who is responsible for the area in question. Counsel for the plaintiff solely argues in opposition to summary judgment CPLR 3212 and does not address the arguments raised by the County with respect to CPLR 3211(a) (1).

A motion to dismiss based on documentary evidence under CPLR 3211(a) (1), "is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law," thereby definitively disposing of the opposing party's claims. (*Leon v Martinez*, 84 NY2d 83, 88 [1994]; see also *Fischbach & Moore v Howell Co.*, 240 A.D.2d 157 [1st Dept 1997]).

Attached to the papers is a color map with a legend indicating ownership of roads and property within the County in the area of the alleged fall. Also attached are assessment records with respect to ownership of the adjacent real property. The County argues that each are publicly available on the official Nassau County website. The County therefore asserts that the documentary evidence conclusively establishes a defense to the asserted claim as a matter of law.

As a general matter, “a municipality is obligated to maintain the streets and highways within its jurisdiction in a reasonably safe condition for travel (*see Lopes v. Rostad*, 45 NY2d 617, 624; *Mazzella v. City of New York*, 72 AD3d 755; *Gonzalez v. City of New York*, 148 AD2d 668).” (*Estate of Radvin v. City of New York*, 119 AD3d 730, 733 [2d Dept 2014]). CPLR 4511(b) provides that upon request of a party, a court may take judicial notice of federal, state, and foreign government acts, resolutions, ordinances, and regulations, including those of their officers, agencies, and governmental subdivisions. The County submits that the court should take judicial notice of the roadway map maintained by the County on its public website. “While the concept of judicial notice is elastic (*see Richardson on Evidence* § 52 [10th ed.]) and applicable to a wide range of subject matter, official promulgations of government appear to be particularly appropriate for judicial notice, given the manner that CPLR 4511 expressly singles them out for such treatment.” (*Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 AD3d 13, 19 [2d Dept 2009] [finding that particular information contained on a government website of sufficient reliability and authenticity for judicial notice]; *see also La Sonde v. Seabrook*, 89 AD3d 132, 137 [1st Dept 2011] [holding that “[t]his Court has discretion to take judicial notice of material derived from official government web sites such as those generated by the New York State Department of State”]; *Tener Consulting Servs., LLC v. FSA Main St., LLC*, 23 Misc. 3d 1120(A) [N.Y. Sup. Ct. Westchester County 2009] [“There is every reason to believe that the information that appears on governmental websites is a reasonably reliable reflection of what the hard copies on file with the government show.”]).

“Judicial notice has never been strictly limited to the constitutions, resolutions, ordinances, and regulations of government, but has been applied by case law to other public documents that are generated in a manner which assures their reliability. Thus, the concept has been applied to census data (*see Affronti v Crosson*, 95 NY2d 713, 720 [2001]; *Buffalo Retired Teachers 91-94 Alliance v Board of Educ. for City School Dist. of City of Buffalo*, 261 AD2d 824, 827 [1999]; *Mackston v State of New York*, 126 AD2d 710 [1987]), agency policies (*see Matter of Albano v Kirby*, 36 NY2d 526, 532 [1975]), certificates of corporate dissolution maintained by the Secretary of State (*see Brandes Meat Corp. v Cromer*, 146 AD2d 666, 667 [1989]), the resignation of public officials (*see Matter of Soronen v Comptroller of State of N.Y.*, 248 AD2d 789, 791 [1998]; *Matter of Maidman*, 42 AD2d 44, 47 [1973]), legislative proceedings (*see Outlet Embroidery Co. v Derwent Mills*, 254 NY 179, 183 [1930]), legislative journals (*see Browne v City of New York*, 213 App Div 206, 233 [1925]), the consumer price index (*see Sommers v Sommers*, 203 AD2d 975, 976 [1994]; *City of Hope v Fisk Bldg. Assoc.*, 63 AD2d 946, 947 [1978]), the location of real property recorded with a clerk (*see Andy Assoc. v Bankers Trust Co.*, 49 NY2d 13, 23-24 [1979]), death certificates maintained by the Department of Health (*see Matter of Reinhardt*,

202 Misc 424, 426 [1952]), and undisputed court records and files (see e.g. *Perez v New York City Hous. Auth.*, 47 AD3d 505 [2008]; *Walker v City of New York*, 46 AD3d 278, 282 [2007]; *Matter of Khatibi v Weill*, 8 AD3d 485 [2004]; *Matter of Allen v Strough*, 301 AD2d 11, 18 [2002]). Even material derived from official government Web sites may be the subject of judicial notice (see *Munaron v Munaron*, 21 Misc 3d 295 [Sup Ct, Westchester County 2008]; *Parrino v Russo*, 19 Misc 3d 1127[A], 2008 NY Slip Op 50925 [U] [Civ Ct, Kings County 2008]; *Nairne v Perkins*, 14 Misc 3d 1237[A], 2007 NY Slip Op 50336[U] [Civ Ct, Kings County 2007]; *Proscan Radiology of Buffalo v Progressive Cas. Ins. Co.*, 12 Misc 3d 1176[A], 2006 NY Slip Op 51242 [U] [Buffalo City Ct 2006]).”

Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 AD3d 13, 19–20 [2d Dept 2009]).

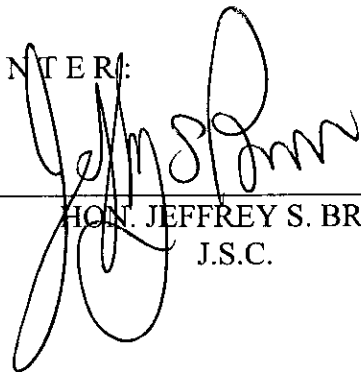
In this instance, the court finds that the map and assessment records annexed to the instant motion together with the web address provided, the validity of which has been confirmed, sufficiently establish that the subject road and sidewalk are not within the jurisdiction of the County of Nassau. Further, the affidavit of Anthony Esposito establishes that the County performed no work in the area, and the affidavit of Veronica Cox establishes the absence of prior written notice. Accordingly, movants have established an entitlement to dismissal under CPLR 3211 (a) (1) and (7).

For the foregoing reasons, the County defendants’ motion to dismiss is **granted**.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
June 4, 2019

ENTERED:



HON. JEFFREY S. BROWN
J.S.C.

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ENTERED
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