Martinez v Town of Babylon
2019 NY Slip Op 34672(U)
August 15, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 601316/2018
Judge: Martha L. Luft
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Short Form Order

Index No. 601316/2018

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - COUNTY OF SUFFOLK

PRESENT:
Hon. Martha L. Luft
Acting Justice Supreme Court

DECISION AND ORDER

x

MICHAEL F. MARTINEZ and JESSICA MARTINEZ,

Plaintiffs,

-against-

TOWN OF BABYLON, COUNTY OF SUFFOLK and STEFANO BELLOISI,

Defendants.

x

Mot. Seq. No.: 001 - MD
Orig. Return Date: 09/21/2018
Mot. Submit Date: 02/05/2019

Mot. Seq. No.: 002 - Mot-D
Orig. Return Date: 11/07/2018
Mot. Submit Date: 02/05/2019

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Upon the e-filed documents numbered 15 through 56, it is

ORDERED that the motion (#001) by the defendant County of Suffolk and the motion by the defendant (#002) Town of Babylon are hereby consolidated for the purposes of this determination; it is further

ORDERED that the motion by the defendant County of Suffolk for, *inter alia*, an order granting summary judgment in its favor and dismissing the complaint as asserted against it is denied; and it is further

ORDERED that the motion by the defendant Town of Babylon for, *inter alia*, an order compelling the preservation and inspection of certain evidence, namely the vehicle involved in the subject accident, is granted to the extent that counsel for the parties shall appear at a pre-motion conference on September 24, 2019 at 9:30 a.m. at the Alan D. Oshrin Supreme Court Building, 1 Court Street, Room A 362, Riverhead, New York, and is otherwise denied.

This is an action to recover damages for injuries allegedly sustained by the plaintiff Michael Martinez as the result of a motor vehicle accident which occurred on April 11, 2017, on Prairie Drive, near the intersection with Deer Park Avenue, in the Town of Babylon, New York. The accident allegedly happened when a vehicle owned and operated by the defendant Stefano Bellosi struck the plaintiff as he was standing on the road shoulder. The plaintiff Jessica Martinez also claims derivatively for loss of services. By their complaint and notices of claim, the plaintiffs allege, among other things, that the defendants Town of Babylon ("the Town") and County of Suffolk ("the County") were negligent in maintaining the roadway, as they failed to undertake a reasonable traffic study or to take reasonable measures to address vehicular traffic routinely speeding in the vicinity of the accident. By their answers, the Town and the County generally deny the material allegations as set forth in the complaint, and they assert several affirmative defenses and cross-claims.

The County now moves for summary judgment dismissing the complaint as asserted against it, arguing, among other things, that it had no duty to Mr. Martinez, as it does not own, manage, maintain, or control Prairie Drive, and that, in any event, it did not receive prior written notice of the alleged defect. In support, the County submits, *inter alia*, the affidavits of Paul Morano, an assistant civil engineer for the County's Department of Public Works, John Donovan, an investigator for the County, and Jason Richberg, Chief Deputy Clerk of the Suffolk County Legislature. The plaintiffs oppose the motion, arguing, among other things, that the County failed to establish its prima facie entitlement to summary judgment, as its submissions failed to address its duty as to Deer Park Avenue, or to address their allegation that the County failed to undertake a traffic study of the intersection where the accident occurred. Further, the plaintiffs allege that, despite the County's contentions to the contrary, it did receive prior written notice of the dangerous condition at the accident site, namely the speed of vehicular traffic in the immediate area. In opposition, the plaintiffs submit several documents, including emails purportedly sent by nonparty James Oppesdisano to the Town Supervisor, and a report by the Suffolk County School Traffic Zone Safety Commission.

A plaintiff seeking damages for personal injuries in a premises liability action must first

establish, as a matter of law, that the defendant or defendants owed him or her a duty of reasonable care in maintaining the property (*see* ***Rivera v Nelson Realty, LLC***, 7 NY3d 530, 534, 825 NYS2d 422, 424 [2006]; ***Tagle v Jakob***, 97 NY2d 165, 168, 737 NYS2d 331, 333 [2001]; ***Alnashmi v Certified Analytical Group, Inc.***, 89 AD3d 10, 13, 929 NYS2d 620, 623 [2d Dept 2011]). Without this duty of reasonable care on the part of a defendant, there can be no breach of such duty and, therefore, no proximate cause of the plaintiff's injuries as a result of the breach (*see* ***Conneally v Diocese of Rockville Ctr.***, 116 AD3d 905, 984 NYS2d 127 [2d Dept 2014]; ***Ortega v Liberty Holdings, LLC***, 111 AD3d 904,976 NYS2d 147 [2d Dept 2013]; ***Nappi v Incorporated Vil. of Lynbrook***, 19 AD3d 565, 796 NYS2d 537 [2d Dept 2005]). As a general rule, liability for a dangerous condition on property must be predicated upon ownership, occupancy, control, or special use of the property (*see* ***Reynolds v Avon Grove Props.***, 129 AD3d 932, 12 NYS3d 199 [2d Dept 2015]; ***Chernoguz v Mirrer Yeshiva Cent. Inst.***, 121 AD3d 737, 994 NYS2d 362 [2d Dept 2014]; ***Grover v Mastic Beach Prop. Owners Assn.***, 57 AD3d 729, 869 NYS2d 593 [2d Dept 2008]).

Where the owner of a premises is a municipality that has enacted a prior written notice statute, it will not be subjected to liability for injuries caused by a defective or dangerous condition on its premises unless it has received prior written notice of such condition or an exception to the prior written notice requirement applies (*see* ***Amabile v City of Buffalo***, 93 NY2d 471, 693 NYS2d 77 [1999]; ***Marciano v Village of Rockville Ctr.***, 136 AD3d 761, 24 NYS3d 520 [2d Dept 2016]; ***Palka v Village of Ossining***, 120 AD3d 641, 992 NYS2d 273 [2d Dept 2014]; ***Long v City of Mount Vernon***, 107 AD3d 765, 967 NYS2d 749 [2d Dept 2013]). As relevant to the County's motion, pursuant to Suffolk County Charter § C8-2A, the County will not be held liable for a defective or hazardous condition caused by the existence of a defective, out-of-repair, unsafe, dangerous, or obstructed condition upon any highway, street, road, or traffic signs, signals, or traffic control devices unless prior written notice of the condition that caused the plaintiff's injury was given, such written notice was sent by certified or registered mail to the Clerk of the Suffolk County Legislature, and the County failed to correct such condition within a reasonable time after the notice was received.

A municipality owes a nondelegable duty to adequately design, construct, and maintain its roadways in a reasonably safe condition, and as long as a highway is reasonably safe for people who obey the rules of the road, this duty is satisfied (*see* ***Stiuso v City of New York***, 87 NY2d 889, 891, 639 NYS2d 1009 [1995]; ***Friedman v State of New York***, 67 NY2d 271, 283, 502 NYS2d 669 [1986]; ***Gutelle v City of New York***, 55 NY2d 794, 795, 447 NYS2d 422 [1981]; ***Tomassi v Town of Union***, 46 NY2d 91, 98, 412 NYS2d 842 [1978]). However, the courts must also accord qualified immunity to the municipality's highway planning decisions, and a governmental entity may not be held liable for a highway safety planning decision unless its study of a traffic condition is plainly inadequate, or there is no reasonable basis for its traffic plan (*see* ***Turturro v City of New York***, 28 NY3d 469, 480, 45 NYS3d 874 [2016]; ***Friedman v State of New York***, *supra*, at 283-284; ***Warren v Evans***, 144 AD3d 901, 902, 42 NYS3d 37 [2d Dept 2016]). A municipal defendant is entitled to qualified immunity "where a duly authorized public planning body has entertained and passed on the very same question of risk as would ordinarily go to the jury" (***Weiss v Fote***, 7 NY2d 579, 588, 200 NYS2d 409 [1960]; *see also* ***Turturro v City of New York***, *supra*; ***Affleck v Buckley***, 96 NY2d 553, 556, 732 NYS2d 625

[2001]; ***Ernest v Red Creek Cent. School Dist.***, 93 NY2d 664, 673, 695 NYS2d 531 [1999]). Nevertheless, a municipality may be held liable if, after being made aware of a dangerous traffic condition, it does not undertake an adequate study to determine what reasonable measures may be necessary to alleviate the condition (*see* ***Turturro v City of New York***, *supra*, at 480; ***Ernest v Red Creek Cent. School Dist.***, *supra*; ***Friedman v State***, *supra* at 284; ***Bresciani v County of Dutchess***, 62 AD3d 639, 640, 878 NYS2d 410 [2d Dept 2009]).

Although the County demonstrated, prima facie, that it did not own, manage, maintain, or control Prairie Drive at the time of the accident, and thus, it owed no duty to Mr. Martinez and cannot be held liable for Mr. Martinez's injuries on that basis by Mr. Morano's affidavit (*see* ***Rivera v Nelson Realty, LLC***, *supra*; ***Reynolds v Avon Grove Props.***, *supra*; ***Conneally v Diocese of Rockville Ctr.***, *supra*), its submissions in support of its motion failed to adequately address the plaintiffs' allegations that it failed to undertake a traffic study which entertained and passed on the very same question of risk that is at issue in this case (*see* ***Weiss v Fote***, *supra*, at 588; ***Bednoski v County of Suffolk***, 145 AD3d 943, 44 NYS3d 485 [2d Dept 2016]; ***Bresciani v County of Dutchess***, *supra*). Although the affidavits of Mr. Donovan and Mr. Richberg demonstrate, prima facie, that the County had no prior written notice of any defect or dangerous condition on Prairie Road (*see* ***Amabile v City of Buffalo***, *supra*; ***Marciano v Village of Rockville Ctr.***, *supra*; ***Palka v Village of Ossining***, *supra*; ***Long v City of Mount Vernon***, *supra*), these affidavits are devoid of any mention of complaints as to the intersection with Deer Park Avenue, and they do not make any reference to whether a traffic study had ever been conducted at the accident site (*see* ***Busterna v County of Suffolk***, 169 AD3d 636, 91 NYS3d 719 [2d Dept 2019]; *see also* ***Turturro v City of New York***, *supra*; ***Friedman v State***, *supra*; ***Bresciani v County of Dutchess***, *supra*). As the County failed to make a prima facie showing of entitlement to summary judgment, the motion is denied, regardless of the sufficiency of the opposing papers (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316 [1985]).

In light of the foregoing, the County's motion for summary judgment is denied, and the Town's motion to compel discovery is granted to the extent described above, and is otherwise denied.

ENTER

Date: August 15, 2019
Riverhead, New York

MARTHA L. LUFT, A.J.S.C.

____ FINAL DISPOSITION

__X__ NON-FINAL DISPOSITION