

Goffi v Town of Eastchester
2021 NY Slip Op 33591(U)
October 18, 2021
Supreme Court, Westchester County
Docket Number: Index No. 63184/2019
Judge: Linda S. Jamieson
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To commence the statutory time period for appeal of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp x Dec Seq. Nos. 1-3 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X

LUCILLE GOFFI,

Index No. 63184/2019

Plaintiff,

DECISION AND ORDER

-against-

TOWN OF EASTCHESTER, 58 GARTH ROAD, LLC,
COZY NAILS CORP. and MICHELLE LEE d/b/a
COZY NAILS,

Defendants.

-----X

The following papers numbered 1 to 11 were read on these motions:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1
Memorandum of Law	2
Statement of Material Facts	3
Amended Notice of Motion, Affidavits, Affirmation and Exhibits	4
Memorandum of Law	5
Statement of Material Facts	6
Notice of Motion, Affirmation and Exhibits	7
Statement of Material Facts	8
Affidavit, Affirmation and Exhibit in Opposition	9
Reply Affirmation and Exhibit	10
Reply Memorandum of Law	11

There are three motions for summary judgment before the Court in this action arising out of a trip-and-fall accident that occurred in the Town of Eastchester (the "Town"), in front of a nail salon run by defendant Michelle Lee ("Cozy"), a tenant of defendant 58 Garth Road, LLC (the "Landlord"). The first motion is filed by Cozy. The second is filed by the Landlord. The Town filed the third motion. They all seek to dismiss the action. In recognition of the fact that neither Cozy nor the Landlord have any responsibility for the area in which the accident occurred, plaintiff failed to oppose either of these two motions. They are thus granted. (In future, the parties should stipulate to the relief sought to avoid wasting the Court's resources.)

Plaintiff was walking to her car on the sidewalk when she tripped and fell on some cobblestones on the sidewalk in front of Cozy. The parties submit to the Court photographs of the area. They show that between the curb and the wide, cement portion of the sidewalk is a decorative strip of Belgian block that appears to be approximately 18 inches wide. The Belgian block also borders a tree well, one block wide all around the entire tree well. Plaintiff tripped on the Belgian blocks that were just next to the tree well border. There is no dispute that there were two Belgian blocks that were not flush with the others. There is also no dispute that the Town had not done any work in

that area prior to the accident.¹ Nor is there any dispute that there was no prior written notice of this alleged defect. There is further no dispute that the Town's law requires such prior written notice. Specifically, the law states, in relevant part, that "No civil action shall be maintained against the Town of Eastchester or town superintendent of highways for damages or injuries to person or property sustained by reason of any defect in its sidewalks . . . unless written notice thereof, specifying the particular place, was actually given to the town clerk or to the superintendent of highways, and there was a failure or neglect to cause such defect to be remedied."

By submitting evidence that there was no such written notice, the Town sustains its prima facie burden. *Holmes v. Town of Oyster Bay*, 82 A.D.3d 1047, 1048, 919 N.Y.S.2d 207, 208 (2d Dept. 2011) ("Where, as here, a municipality has enacted a prior written notice law . . . it cannot be held liable absent proof of the requisite notice or an exception to that requirement."); *Oliveri v. Vill. of Greenport*, 93 A.D.3d 773, 773-74, 940 N.Y.S.2d 675, 676 (2d Dept. 2012) ("the Village established its prima facie entitlement to judgment as a matter of law by submitting evidence that it lacked prior written notice of the allegedly defective condition, as required by Village Law. . . .").

¹After the accident, the Town repaired the jutting Belgian blocks.

In opposition, plaintiff merely contends that she "was not required to give written notice of the defect because the sidewalk does not encompass the cobblestones within the tree well which [sic] Plaintiff fell." In support of her argument, she cites a Court of Appeals decision, *Vucetovic v. Epsom Downs, Inc.*, 10 N.Y.3d 517, 518-19 (2008), which holds that "a tree well is not part of the 'sidewalk' for purposes of section 7-210 of the Administrative Code of the City of New York." There is no dispute that the New York City Administrative Code does not apply here. Plaintiff has cited no law that holds that a tree well is not part of a sidewalk for purposes of a prior written notice requirement.

Plaintiff's position is problematic for two reasons. First, a review of the photographs shows that the area where plaintiff tripped is adjacent to a tree well, but not in the tree well. According to the marked photographs, she did not even trip on the Belgian block border of the tree well, but on the blocks next to the border block. But putting that aside, even if she had tripped in the tree well, the Second Department has repeatedly found that prior written notice requirements promulgated by multiple municipalities apply to accidents in and near tree wells. See, e.g., *O'Brien v. Vill. of Babylon*, 196 A.D.3d 494 (2d Dept. 2021) ("Contrary to the plaintiffs' contention, the tree well is part of the sidewalk for purposes of prior written notice"); *Oliveri v. Vill. of Greenport*, 93 A.D.3d 773, 773, 940

N.Y.S.2d 675, 676 (2d Dept. 2012) ("The plaintiff allegedly sustained injuries when she tripped on a raised tree grate located in a strip of cobblestone between a sidewalk and a roadway in the Village of Greenport. . . . Contrary to the plaintiff's contention, the prior written notice provision of Village Law § 6-628 is applicable to the location of her accident."); *Malone v. Town of Southold*, 303 A.D.2d 651, 652, 757 N.Y.S.2d 85, 86 (2d Dept. 2003) ("Contrary to the plaintiffs' contentions, both by statute and case law, the strip of grass between the sidewalk and roadway is part of the sidewalk, and is therefore governed by Town Law § 65-a(2)."); *Gallo v. Town of Hempstead*, 124 A.D.2d 700, 508 N.Y.S.2d 212, 212 (2d Dept. 1986) ("a hole in the grass adjacent to the curblin . . . was part of the sidewalk."); *Taustine v. Inc. Vill. of Lindenhurst*, 158 A.D.3d 785, 785, 71 N.Y.S.3d 547, 548 (2d Dept. 2018).

As plaintiff has cited no law to support her position, the Court must grant the Town's motion. The action is dismissed in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
October 18, 2021



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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