SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 56 SUFFOLK COUNTY

PRESENT:

Hon. Carmen Victoria St. George
Justice of the Supreme Court

DAVID ITZKOWITZ,

Plaintiff,

-against-

COUNTY OF SUFFOLK, SUFFOLK COUNTY TRANSIT (SCT) SERVICES, TOWN OF HUNTINGTON, THE FRANKLIN JOHNSON, INC., LUKOIL NORTH AMERICA, LLC and SUMBAL ESTATES AND TECHNOLOGIES, INC.,

Defendants.

Index No.
601476/17

Motion Seq:
003 MG
004 MD
005 MD

Decision/Order

The following numbered papers were read upon this motion:

Notice of Motion/Order to Show Cause.....	123-148; 150-170; 173-206
Answering Papers.....	149; 213-228; 229-244; 245-260
Reply.....	261; 263-265; 266
Briefs: Plaintiff's/Petitioner's.....	
Defendant's/Respondent's.....	204

Plaintiff commenced this action to recover for personal injuries that he suffered when his pant leg became caught on a four-inch high, sheared-off piece of metal signpost protruding from the ground, causing him to fall face-first into the roadway. The shard of the signpost protruded from what is referred to as a "utility strip" located between the sidewalk and the curb line, which is also the location of a bus stop on Larkfield Road, in East Northport, Suffolk County, New York. Plaintiff's accident occurred on May 13, 2016, after he disembarked from the bus and attempted to cross Larkfield Road. Plaintiff sues the County and its Transit Services who operated the bus/bus route, the Town of Huntington, who owns the sidewalk, right of way and sidewalk at the location of the incident, and the adjoining property owner and lessees of the gas

station situated at the corner of Larkfield Road and Clay Pitts Road (Franklin Johnson, Inc., Lukoil North America, LLC and Sumbal Estates and Technologies, Inc.).

Each of the defendants moves separately for summary judgment dismissal of the complaint and all cross-claims as alleged against each of them: Motion Sequence 003 is made jointly by Franklin Johnson, Inc., Lukoil North America LLC and Sumbal Estates and Technologies, Inc. (Owners/Lessees); Motion Sequence 004 is made by the Town of Huntington (the Town), and Motion Sequence 005 is made by the County and its Transit Services (County/Services). Plaintiff opposes each of these motions, and the Town opposes the Owners/Lessees' motion. The three motions are consolidated for determination herein.

The Movants' Various Contentions

While the Owners/Lessess acknowledge that the Town's Code, Section 173, places liability for maintaining and repairing the sidewalk, and keeping it free and clear from snow, ice, filth, dirt, weeds and all other obstructions upon adjacent/abutting property owners, and that the "sidewalk" includes the subject utility strip, the Owners/Lessees maintain that the object that caused the plaintiff's fall was deliberately placed in the utility strip by a municipality, and so it is not part of the sidewalk for purposes of imposing liability upon adjacent/abutting property owners. For this proposition, the Owners/Lessees cite to a number of cases involving trips and falls over remainders of metal signposts that occurred in New York City, involving the City's Administrative Code. The Owners/Lesseses maintain that they have no duty to install, maintain, alter, replace, repair, or remove the signpost in question, or any remnant thereof, since it was a bus stop sign belonging to the County. Furthermore, the Owners/Lessees maintain that there is no statutory or common law duty to report any such dangerous condition.

In its bid for dismissal, the Town asserts that it is entitled to dismissal of the complaint pursuant to CPLR § 3211 (a)(7) because the complaint fails to assert the necessary elements of negligence against the Town, and for summary judgment dismissal because the Town did not receive prior written notice of the alleged defect; because the Town did not create the alleged dangerous condition; and because the Town had no duty to maintain the subject sidewalk in accordance with Town Code § 173-16 that imposes liability upon the adjoining/abutting owner/lessee/occupant.

The County/Services defendants maintain that the County has no ownership interest in, or jurisdiction over the sidewalk where plaintiff is alleged to have fallen, although it allows that "even assuming that Suffolk County has any responsibility over the protruding piece of metal," there was no prior written notice to the County concerning the alleged defect. It is undisputed that it was the County's signpost remnant that caught the plaintiff's pant leg, causing him to fall. Furthermore, the County indemnifies the private entity providing the bus services (Services), and asserts on behalf of Services that it/the bus driver is not the proximate cause of plaintiff's injuries because the sign post stub was open and obvious. At most, County/Services contend that they merely furnished the condition or occasion for the occurrence of the event, rather than being one of its causes, especially because the alleged dangerous condition was not present at the precise location where the bus driver permitted plaintiff to alight from the bus. The County/Services

defendants maintain that the proximate cause of plaintiff's injuries was "the entity in control of the sidewalk in question. In this case neither is that the County of Suffolk nor its contractor [Services] which runs the County Bus Service."

The County/Services' Motion (Sequence 005)

In support of their motion, these defendants submit, *inter alia*, the Notice of Claim, the extensive pleadings, plaintiff's General Municipal Law §50-h testimony (50-h testimony), color photo exhibits introduced during plaintiff's testimony, the deposition transcript of the County's transportation planner (Christopher Chatterton),[1] and the affidavits of various County officials attesting to the fact that there was no prior written notice or work performed at the subject location on Larkfield Road prior to the date of plaintiff's fall.

It is undisputed that there was no prior written notice to the County defendant concerning the protruding metal signpost remnant, nor is there any dispute that neither the County nor Services has any duty to maintain the sidewalk upon which the incident occurred; therefore, *prima facie* entitlement to summary judgment on these grounds (lack of duty to maintain the sidewalk where the accident occurred and lack of prior written notice) has been established (***Forbes v. City of New York***, 85 AD3d 1106 [2d Dept 2011]; ***Carlo v. Town of East Fishkill***, 19 AD3d 442 [2d Dept 2005]), leaving the remaining theories of liability premised upon the claim that Suffolk/Services failed to stop the bus at a place where the plaintiff could have alighted safely, and that the County owned the signpost.

"A common carrier owes a duty to an alighting passenger to stop at a place where the passenger may safely disembark and leave the area" (***Miller v. Fernan***, 73 NY2d 844, 846 [1988]; ***Conetta v. New York City Transit Authority***, 307 AD2d 333 [2d Dept 2003]). "Whether or not in a given case a breach of duty has occurred will depend on the particular facts of the case and is either a question of law or of fact depending on the susceptibility of the facts to varying inferences" (***Blye v. Manhattan & Bronx Surface Transit Operating Authority***, 124 AD2d 106, 109 [1st Dept 1987]). In these types of cases, liability rests upon a finding that the placement of the bus by the driver requires a passenger to negotiate a dangerous or defective path in order to board or exit the bus (***Gross v. New York City Transit Authority***, 256 AD2d 128, 129 [1st Dept 1998]), so generally, the issue whether the common carrier breached its duty under particular circumstances is one for the jury (***Malawer v. New York City Transit Authority***, 18 AD3d 293, 295 [1st Dept 2005]).

Here, there exists a question of fact as to whether the bus from which the plaintiff disembarked stopped at a safe location. The plaintiff testified that he was seated essentially in the middle of the bus, closest to the side/rear door. His seat faced the driver's side of the bus. When the bus stopped at the subject bus stop on Larkfield Road, plaintiff explained that he arose, turned to his left to get to the side/rear door, and descended approximately two steps to get off the bus. Plaintiff identified in photographs where the bus stopped, demonstrating that the bus stopped in such a position such that the side/rear door was only "a couple of feet from the

[1] The evidence submitted establishes without question that the broken signpost was owned and installed by or on behalf of the County/Services defendants.

[utility] pole" depicted in Exhibit A1. Plaintiff walked around the utility pole, to the left of it, and then turned to his right to cross the street when his right pant leg became snagged on the metal signpost stump protruding from the ground to the right of the utility pole. Immediately before he fell, the bus was already pulling away from the bus stop.

In reviewing Exhibit A1, it is reasonable to infer that plaintiff could just as easily have encountered the protruding metal stump had he been able to immediately walk to his right upon alighting from the bus; in either scenario, there is an issue as to whether by stopping the bus next to a utility pole the bus driver provided a place where the passenger could safely disembark and leave the area, rather than "merely furnish[ing] the condition or occasion for the occurrence of the [accident]" (***Sheehan v. City of New York***, 40 NY2d 496 [1976]). Thus, this case presents no exception to the general rule that the issue as to whether the common carrier breached its duty to the plaintiff/passenger is one for the jury. Issue-finding rather than issue determination is the court's function upon a summary judgment motion (***Sillman v. Twentieth Century-Fox Film Corp.***, 3 NY2d 395, 404 [1957]).

It is beyond dispute based upon all of the submitted evidence, including the testimony of the County's own witness, that the County owned and installed the subject sign post that was sheared off as the result of a car accident preceding the date of plaintiff's accident; therefore, as discussed *infra*, the County has failed to establish that it had no duty to repair or maintain that post.

The County/Services defendants have failed to establish their *prima facie* entitlement to summary judgment as a matter of law. In view of the foregoing determination, it is unnecessary to determine whether the papers submitted in opposition are sufficient to raise a triable issue of fact (*see* ***Levin v Khan***, 73 AD3d 991 [2d Dept 2010]; ***Kjono v Fenning***, 69 AD3d 581[2d Dept 2010]).

Motion Sequence 005 is denied.

The Town's Motion (Sequence 004)

In support of its motion, the Town submits, *inter alia*, the pleadings, Notice of Claim, plaintiff's 50-h transcript, the deposition transcript of the County's transportation planner (Christopher Chatterton), and affidavits from the Town's Director of the Department of Transportation & Traffic Safety, a Principal Office Assistant for the Town Clerk's Office, and the Town's Highway Construction Coordinator and Road Permit Inspector.

Insofar as the Town's assertion that the Notice of Claim, Summons and Complaints and Supplemental Summons and Complaints fail to assert the necessary elements of negligence against the Town, that basis for dismissal is denied. Although the Town claims that plaintiff has failed to allege that the Town created the alleged defective condition and has failed to allege that it had notice of that alleged condition, the Notice of Claim alleges that the Town was negligent "in failing to properly inspect the aforesaid location and allowing said location to be in a state of disrepair, *thereby creating* and allowing a dangerous condition to exist; *in failing to properly repair and/or remedy the hazardous, dangerous and defective condition* that was present at the

aforementioned bus stop *despite having had ample actual and constructive notice* of the existence of same for an inordinate period of time" (emphasis added). Moreover, plaintiff's Bill of Particulars directed to the Town and dated May 8, 2017 makes the same allegation noted above and it also alleges that, "Defendant caused and/or created the condition by making defective repairs to said location[;] Defendant had constructive and actual notice of the defective and dangerous condition[;] Actual notice is claimed in that the defendants, its agents, servants and/or employees, caused and/or created the condition complained of and/or that the defendants had actual knowledge of the defect. Constructive notice is claimed in that the condition existed for such a long and unreasonable period of time that the defendant by its agents, servants and/or employees, could have and should have taken steps necessary to avoid the occurrence of the accident in the time available to it." In addition to all of these allegations, the issue of the alleged defective repairs was fully explored during the deposition of the Town's Highway Construction Coordinator and Road Permit Inspector, Richard Scheffler.[2] Accordingly, the Town has not suffered any surprise or prejudice (*see* ***Rodriguez v. Panjo***, 81 AD3d 805, 806 [2d Dept 2011]).

It is undisputed that prior written notice of a defect given to the Town Clerk or the Town Superintendent of Highways is required in order to impose liability upon the TOH for injuries to persons or property resulting from an alleged defective condition of any highway, bridge, culvert, street, sidewalk or crosswalk owned, operated or maintained by the town (***Huntington Town Code Article 1, § 174-3***; *see also* ***Town Law § 65-a***). A municipality that has enacted a prior written notice statute may not be subjected to liability for personal injuries resulting from a defect absent the required written notice, unless an exception to that requirement applies (***Forbes v. City of New York***, 85 AD3d 1106 [2d Dept 2011]). Actual or constructive notice of an allegedly defective condition does not satisfy the prior written notice requirement (***Charles v. City of Long Beach***, 136 AD3d 634 [2d Dept 2016]; ***Simon v. Incorporated Village of Lynbrook***, 116 AD3d 692 [2d Dept 2014]).

"Recognized exceptions to the prior written notice requirement exist where the municipality created the defect or hazard through an affirmative act of negligence, or where a special use confers a special benefit upon it" (***Miller v. Millage of East Hampton***, 98 AD3d 1007, 1008 [2d Dept 2012]; *see also* ***Masotto v. Village of Lindenhurst***, 100 AD3d 718 [2d Dept 2012]).[3]

Based upon the submitted affidavits, the Town has established its *prima facie* entitlement to summary judgment as a matter of law on the bases that it did not receive prior written notice of the alleged dangerous condition/defect, nor did it perform any work at the subject location which would have created the alleged dangerous condition/defect.

The affidavit of Stephen F. McGloin, the Director of the Department of Transportation and Traffic Safety also underscores that the County maintains a designated bus stop at the

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[2] The Court notes that the Town has not submitted the deposition testimony of its own witness that was taken on July 30, 2018, well before the date that Richard Scheffler's affidavit was sworn to on October 20, 2020. Mr. Scheffler's testimony was submitted by the Town in reply, along with the testimony of the non-party witness.
[3] Plaintiff does not allege special use in this case.

subject location, that a sign for its bus stop was installed there by the County, and that the Town did not install or maintain the bus stop sign, nor is the Town responsible to do so.

The Town also relies upon its Code, § 173-16 that imposes a duty upon the owner, lessee, tenant, and occupant to "maintain and repair the sidewalk adjoining his lands and [ ] keep such sidewalk free and clear of snow, ice, filth, dirt, weeds, and all other obstructions. . ." This Code provision also imposes liability for any injury or damage to person or property "by reason of the omission, failure or neglect to repair or maintain such sidewalk in a safe condition or to remove show, ice or other obstructions and/or defects therefrom." Furthermore, "sidewalk is defined in § 173-15 as being "[t]he area between the edge of a roadway or highway pavement and the lot line of the abutting property, including but not limited to the curb, utility, brick, tree, dirt or landscape areas."

Inasmuch as there is no dispute that the Owner/Lessee defendants' gas station adjoins the sidewalk as that term is defined in the Town Code, based upon the evidence supplied in support of its motion, the Town has established its *prima facie* entitlement to summary judgment dismissal of the complaint on this basis as well.

In opposition, the plaintiff submits, *inter alia*, his 50-h deposition transcript, the same color photographs submitted by the County/Services, the deposition transcripts from the Owner/Lessee defendants, the leases, the deposition transcript of the County's transportation planner (Christopher Chatterton), the deposition transcript of the Town's Highway Construction Coordinator and Road Permit Inspector, Richard Scheffler, and the deposition transcript of non-party Peter Hoefling.

Mr. Hoefling's deposition testimony raises a question of fact as to whether the Town had been notified of the protruding signpost remnant in or about 2012, when Mr. Hoefling ripped his shoes on the remnant. He testified that as a result of a serious motor vehicle accident that occurred in 2007, the bus stop sign was sheared off, leaving the metal signpost remnant protruding from the utility strip. His testimony further raises a question of fact as to whether the Town performed some work upon the exposed metal signpost remnant by placing topsoil or a lump of asphalt over it prior to the date of plaintiff's fall. Despite the Town characterizing Mr. Hoefling's testimony in this regard as possibly raising a "slim question of fact" and possibly casting a "smidgen of doubt," questions of fact are questions of fact, no matter their purported size. Moreover, it is appropriately left to the trier of fact as to the weight to be accorded to Mr. Hoefling's testimony, after seeing and hearing the witness.

Mr. Scheffler's inconsistent testimony concerning Town road crew's placement of topsoil over the protruding metal signpost remnant did not foreclose the possibility that a Town crew did as Mr. Hoefling recounted they did. Although it would not be "policy" to do something like that, Mr. Schefller allowed that it was "possible for something like that to be done." Later in his testimony, when asked about Town employees putting topsoil over the metal remnant, Mr. Scheffler testified that there was "not a chance" that Town employees could have done that because "they would have gotten fired for that" if "[e]verybody would see you on Larkfield Road doing that and that's not addressing the problem." Mr. Scheffler also testified that a road

crew placing asphalt or blacktop on top of the protruding metal would violate Town protocol that calls for removal of the stud, backfilling the area, and notifying the owner of the post.

Based upon Mr. Chatterton's testimony, the bus stop sign at the subject location on Larkfield Road would have been installed by the County, and if a sign needed to be replaced in a location, the Department of Public Works would produce a duplicate sign and re-install the sign. Furthermore, Mr. Chatterton testified that the County first received notice of the missing sign at this bus stop in August 2016, a few months after plaintiff's accident, but he stated that he did not know who made the complaint/notice. He further testified that the County "would determine whether it's a known location of a Suffolk County Transit bus stop," and then act on it accordingly. Mr. Chatterton also acknowledged that there is a "backlog" of requests for missing sign replacements in the County, and as staff are "made available," the requests are addressed.

Based upon this testimony, it is evident that the County/Services maintains responsibility for the bus stop signs, even after the County's Department of Public Works initially installs the signs. The fact that the County/Services defendants owned and installed the subject sign whose broken signpost remained embedded in the subject utility strip portion of the sidewalk adjoining the Owner/Lessee's gas station, is significant for its impact upon the legal interpretation to be afforded by this Court to Town Code § 173-16 relied upon by the Town in support of its motion and in opposition to the summary judgment motion of the Owner/Lessee defendants discussed *infra*.

Mr. Scheffler's testimony further impacts the Town's reliance upon its own Code section. He testified that Larkfield Road in the location of the plaintiff's accident is owned by the Town, that the road is maintained and inspected by the Town, and that the sidewalk and utility strip are also owned, maintained, and inspected by the Town. In terms of maintenance of the sidewalk and utility strip area, Mr. Scheffler stated that "maintenance" is restricted to issuing permits concerning those areas, emphasizing that "snow removal, sidewalk replacement, things of that nature" are the responsibility of the adjoining landowner. Relying on his understanding of the cited Code section, Mr. Scheffler also testified that the protruding metal signpost remnant would be the responsibility of the adjoining landowner.

Mr. Scheffler was able to identify the subject area in plaintiff's photographs marked as Exhibits 1 and 2, including the protruding metal signpost remnant. In contrast to his testimony about the adjoining landowner's responsibility for the metal remnant, when he was asked what the Town would do if a complaint had come in concerning the protruding piece of metal, Mr. Scheffler testified that the complaint "would be forwarded to the appropriate party." When asked who was the appropriate party, he replied, "[t]hat would take some doing. We'd have to figure that out;' "[t]hat would take a little bit of research." This answer, in and of itself, undermines the Town's position that the property owner/lessee/occupant is responsible for remedying the condition complained of. If this signpost remnant was, indeed, the adjoining owner's responsibility, then there would be no need to "research" to determine who was the "appropriate party."

More curious is the fact that the metal signpost remnant was removed after plaintiff's accident, but Mr. Scheffler at the time of his deposition in 2018 did not know who removed it. He did not perform a search of the Town's Time and Material Reports referencing removal of the metal remnant post-accident. Nonetheless, Mr. Scheffler was asked who would be responsible for removing the metal piece, to which he answered, "[t]he owner of it." When asked the basis for his answer, Mr. Scheffler testified that, "[w]ell, it's theirs, they own it, they're responsible for it. If they put it there, they own it. If they own it, they're responsible for it."

Mr. Scheffler was further asked how the metal remnant's owner would be identified, and he answered, "[w]however put that sign there would have a record of it. . .they would have a record of it going in on their time and material reports." Accordingly, by referring to "their time and material reports," this language indicates that another municipal entity owned/put that sign at the subject location since that is not the type of record ordinarily kept by private individuals/entities, plus it has been established that the County/Service defendants installed and owned the sign that was sheared off in the course of the 2007 traffic accident.

Mr. Scheffler's testimony further undermines the notion that the adjoining property owner was responsible for this metal signpost remnant when he stated that if this particular metal protrusion was reported to the Town, the "Town would have removed it and notified the County . . .or whoever's sign it was." The "Town of Huntington, if it came across that situation [referring to the signpost remnant] would act on it and remove it and then we would notify the . . . sign owner, the pole owner, of what happened." There is no testimony from the Town indicating that the Owner/Lessee defendants were ever notified by the Town about the metal signpost remnant, nor would there be since it is established that the County/Service defendants owned the subject sign/signpost remnant.

Although Mr. Scheffler testified that he did not know if the adjoining landowner ever removed a signpost from the subject location, his testimony indicates that the Owner/Lessee defendants did not do so. According to Mr. Scheffler, if a property owner wanted to install a sign post, the owner would have to see Mr. Scheffler for a permit from the Town. As to removal of a sign post in the utility strip, Mr. Scheffler testified that no private resident or commercial business would be permitted to remove a sign at all, and no permit would be issued for removal of a sign in that area. In contrast to this testimony, Mr. Scheffler testified at the end of his deposition that an adjoining landowner could remove the protruding metal remnant of a sign, because "[t]he sign, itself, is already gone, the information it contained is already gone, it's not doing anything, but the responsibility of safety now takes paramount and that's why he would be expected to remove that. The information is gone."

Mr. Scheffler's tortured reasoning is unavailing, and it flies in the face of his other testimony that the owner of the remnant would be contacted following removal of the remnant and "research" performed by the Town. According to Mr. Scheffler's interpretation, the owner of the signpost remnant somehow is absolved of responsibility for its ownership once the sign containing the information is no longer affixed to the post. Under the facts presented here, his reasoning makes even less sense since the sign undisputedly belongs to the County/Service defendants.

Further according to Mr. Scheffler's testimony, no permits were applied for by the Owner/Lessee defendants concerning the installation of any sign upon the utility strip at the subject location prior to the date of plaintiff's accident.

The evidence submitted in opposition that was reviewed by this Court raises issues of fact as to notice and creation of the defect. The opposition also raises not only a question of fact as to the Owner/Lessee defendants' responsibility to remove this metal signpost stump, but the opposition also raises a question of law for this Court to determine concerning the applicability of the cited Town Code section purportedly imposing liability upon the adjoining landowner for a defect of this nature. This legal issue concerning the statutory obligation of an adjoining landowner to remove objects deliberately placed in a sidewalk by a municipality is the gravamen of the Owner/Lessees' summary judgment motion.

Motion Sequence 004 is denied.

The Owner/Lessees' Motion (Sequence 003)

In support of their motion, these defendants submit, *inter alia*, the plaintiff's 50-h transcript, the County witness's deposition (Chatterton), and the photographs introduced during plaintiff's testimony. As previously noted, not only does the plaintiff oppose this motion, but the Town opposes this motion, relying upon the Code, § 173-16. The County/Services defendants have not opposed this motion.

The Owner/Lessees maintain that, since there is no dispute that the sign was owned and installed by the County/Services defendants to mark the subject bus stop, which sign was later sheared off due to a car accident preceding the date of plaintiff's injury, that this type of obstruction is not the kind contemplated by the Town Code to impose liability upon the adjoining property owner.

Although the New York City Administrative Code (NYC Code) referred to in the cases cited by the Owner/Lessee defendants is narrower than the Town's definition of "sidewalk," the Owner/Lessee defendants do not maintain that the NYC Code is applicable here; rather, these defendants contend that the reasoning of those cases should apply in the sense that liability should not be imposed on adjoining property owners for injuries caused by objects installed and owned by a municipality (the City of New York), because the adjoining property owners have no duty to repair or control the municipally-owned object in the first place (*see* ***Vucetovic v. Epsom Downs, Inc***., 10 NY3d 517 [2008]; ***Calise v. Millenium Partners***, 26 Misc3d 1222 [A] [Sup Ct New York County 2010][abutting land owner has not duty to repair defect or control over sign post of a City-owned sign]; ***King v. Alltom Properties, Inc***., 16 Misc3d 1125 [A] [Sup Ct Kings County 2007] [broken City signpost did not shift liability to abutting property owner]; *cf.* ***Sharbat v. 106-24 Realty Corp***., 49 Misc3d 1218 [A] [Sup Ct Queens County 2015] [adjoining property owner submitted no evidence establishing that the piece of metal was part of a City-owned sign or signpost]).

The Owner/Lesses' motion cannot be viewed in a vacuum and without regard to the other evidence submitted upon these consolidated motions. As discussed, Mr. Scheffler's deposition

testimony fails to unequivocally establish that the adjoining property owners had any duty to remove the protruding metal signpost remnant. In fact, Mr. Scheffler indicated at a number of junctures in his testimony that the Town would remove such an obstruction and then notify the owner of the protruding metal post; further, there is no evidence that the Town ever notified the adjoining owners about removal of that post, or that the Owner/Lessees defendants removed the subject protruding metal post. It is reasonable to infer from the submitted evidence that, if the Town removed the protruding metal remnant of the County/Services' bus stop signpost,[4] the Town notified the undisputed owner of same: the County/Services defendants.

"[L]egislative enactments in derogation of common law, and especially those creating liability where none previously existed," must be strictly construed (***Blue Cross & Blue Shield of N.J., Inc. v Philip Morris USA Inc.***, 3 NY3d 200, 206 [2004] [internal quotation marks and citation omitted]). Accordingly, it is the determination of this Court that the Owner/Lessees defendants cannot be held liable for a defect caused by County-owned property, namely the bus stop signpost remnant. The Owner/Lessess defendants have established their *prima facie* entitlement to summary judgment as a matter of law.

The legal arguments in opposition are unavailing for the reasons already set forth herein.

Motion Sequence 003 is granted, and the complaint and any and all cross-claims against the Owners/Lessess defendants are hereby dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: May 13, 2021
Riverhead, NY

CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION [ ] NON-FINAL ISPOSITION [X]

[4] The identity of the persons/entity that removed the post remnant post-incident remains a mystery based upon the submitted papers.