

**McKeon v City of New York**

2021 NY Slip Op 33664(U)

July 1, 2021

Supreme Court, Nassau County

Docket Number: Index No. 617782/2019

Judge: Sharon M.J. Gianelli

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU – IAS/TRIAL PART 11  
Present: Hon. Sharon M.J. Gianelli

\_\_\_\_\_  
KEVIN MCKEON,

*Plaintiff,*

-against-

CITY OF NEW YORK,  
VILLAGE OF EAST ROCKAWAY,  
THE TOWN OF HEMPSTEAD and  
COUNTY OF NASSAU,

*Defendants.*

\_\_\_\_\_  
KEVIN MCKEON,

*Plaintiff,*

-against-

NEW YORK AMERICAN WATER,

*Defendant.*

\_\_\_\_\_  
Papers submitted:

Defendant County of Nassau Notice of Motion \_\_\_\_\_X

Defendant County of Nassau Affirmation in Support \_\_\_\_\_X

Plaintiff Affirmation in Opposition w/Exhibits \_\_\_\_\_X

Defendant County of Nassau Affirmation in Reply \_\_\_\_\_X

This is Defendant County of Nassau’s motion for summary judgment, pursuant to CPLR 3212, dismissing Plaintiff’s complaint, dismissing any and all cross-claims, and granting judgment in favor of Defendant County of Nassau. Defendant County of Nassau’s motion is based on their assertion that the County does not own, operate, maintain, control, exercise dominion upon, or otherwise have jurisdiction over the accident site, the fire hydrant over which Plaintiff tripped, or the lighting that is at the location.

Further, the County asserts that even if it were the case that the County did have some control or connection to the accident site, the County did not have any prior written notice of any defect at the location, and therefore, cannot be found to be liable for any related injuries.

The underlying action arises out of injuries Plaintiff allegedly sustained as a result of a trip and fall accident on a sidewalk where a fire hydrant was present and allegedly improperly installed, constructed, placed or maintained, on December 23, 2018, at approximately 5:40 p.m., at Ryder Avenue, approximately 100 feet on the Northwest sidewalk from Prospect Avenue, East Rockaway, in the County of Nassau, City and State of New York.

Defendant County of Nassau has demonstrated by way of affidavit that the County does not own, operate, maintain, control, exercise dominion upon, or otherwise have jurisdiction over the accident site, the fire hydrant over which Plaintiff tripped, or the lighting that is at the location. The County additionally asserts that even if it were the case that the County did have some control or connection to the accident site, a search of the County's records reveals that the County did not have any prior written notice of any defect at the location.

Plaintiff opposes Defendant County's motion for summary judgment on the grounds that it is premature. Plaintiff argues that no depositions have taken place, leaving material issues of fact unresolved as to Defendant County's potential involvement in the

construction, maintenance of the fire hydrant and surrounding streetlights, and accident site.

*Law/Analysis*

It is well-settled that a party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment, as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York Univ. Medical Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruder, Inc. v. Ceppor*, 46 N.Y.2d 223, 413 N.Y.S.2d 141 (1978); *Friends of Animals, Inc. v. Associated Fur Manufactures, Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). In considering the motion, “the evidence is to be viewed in a light most favorable to the party opposing the motion, giving [it] the benefit of every favorable inference.” *Cortale v. Educational Testing Serv.*, 251 A.D.2d 528, 674 N.Y.S.2d 753 (2d Dept. 1998). It is also well-settled that the function of a summary judgment motion is issue finding, not issue determination. *Stillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957).

Here, discovery is in its early stages and more material facts need to be fleshed out and resolved before a grant of summary judgment is warranted.

Accordingly,

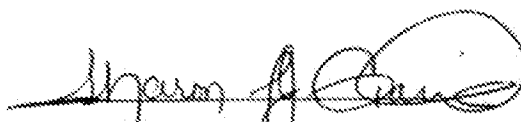
It is

ORDERED, that Defendant County of Nassau's motion for summary judgment, pursuant to CPLR 3212, dismissing Plaintiff's complaint, dismissing any and all cross-claims, and granting judgment in favor of Defendant County of Nassau, is Denied.

Any applications not specifically ruled upon herein is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York  
July 1, 2021



HON. SHARON M.J. GIANELLI  
Justice of the Supreme Court

The conformed signature on this Order and copies thereof shall be deemed original.

**ENTERED**

**Jul 12 2021**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE