

**Montes De Oca v Genovesi**

2021 NY Slip Op 33776(U)

June 16, 2021

Supreme Court, Westchester County

Docket Number: Index No. 56736/2020

Judge: Charles D. Wood

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

-----X  
**JORGE MONTES DE OCA,**

**Plaintiff,**

**-against-**

**MICHAEL G. GENOVESI, SEBASTIAN S. DINIS,  
ISABEL M. DINIS, COUNTY OF WESTCHESTER,  
TOWN OF OSSINING and VILLAGE OF OSSINING,**

**Defendants.**

-----X  
**WOOD, J.**

**DECISION & ORDER**  
Index No.56736/2020  
Seq. No. 2

New York State Courts Electronic Filing (“NYSCEF”) Documents Numbers 63-84, 86-101, were read in connection with the Village of Ossining’s motion for summary judgment on the grounds that it did not receive prior written notice of the alleged defective condition and did not affirmatively create same. Plaintiff, Dinis defendants, and defendant Genovesi oppose the motion.

Plaintiff claims that he sustained personal injuries on July 30, 2019, at approximately 2:15 P.M., at the intersection of Ryder Road and Sunset Drive, in Ossining, when the vehicles driven by plaintiff, and defendant Michael G. Genovesi, collided. Plaintiff accuses the Village of improper maintenance of trees/shrubs, allowing said greenery to grow to a height and width that obstructed the vision of those traveling at the subject accident site. Plaintiff also cites that the accident could have been prevented had proper traffic-control devices signals been in place.

NOW, upon the foregoing papers, the motion is decided as follows:

It is well settled that a proponent of a summary judgment motion must make a “prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to

demonstrate the absence of any material issues of fact” (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is “required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion” (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]).

“Where, as here, a municipality has enacted a prior written notice law, it may not be subjected to liability for injuries caused by a dangerous condition which comes within the ambit of the law unless it has received prior written notice of the alleged defect or dangerous condition, or an exception to the prior written notice requirement applies” “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” (Knapp v Town of Hempstead, 130 AD3d 579, 580 [2d Dept 2015]).

Here, opposing parties' argue that this motion is premature for not only does paper discovery remain outstanding, but, depositions of the parties have not yet occurred, and the Village has not been deposed as to tree/bush maintenance of the subject location. Such that discovery might lead to "relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (Rutherford v Brooklyn Navy Yard Dev. Corp., 174 AD3d 932 [2d Dept 2019]).

Further, opposing parties raise that facts essential to opposing the motion were exclusively within the knowledge and control of the Village, including the feasibility of appropriately located traffic-control devices. Absent from The Village's motion is a discussion on the issue of appropriately located traffic-control devices at the subject location, except in its Reply, the Village contends that attempts to imply that the accident was caused by some issue with the road or signage are simply without foundation.

The record shows that plaintiff has no personal knowledge of the relevant facts raised by these circumstances, and should be afforded the opportunity to conduct depositions and obtain document production and an inspection of the premises to find out, the duty to maintain the abutting shrubbery and the duty to install signs. This would include evidence of any highway safety planning decisions resulting from deliberative decision-making processes.

Accordingly, the court finds that it is premature to award summary judgment to the Village at this juncture on the ground that there was no prior written notice, or the absence of any recognized exceptions thereto (Knapp v Town of Hempstead, 130 AD3d 579 at 580).

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

NOW, therefore, it is hereby

ORDERED, that the Village of Ossining's motion for summary judgment is **denied** as premature, with leave to renew upon completion of discovery; and it is further

ORDERED, that the parties shall appear in the Compliance Part, on July 26, 2021 at 10:00 A.M., as previously ordered by Hon. Joan B. Lefkowitz (NYSCEF #115).

Dated: June 16, 2021  
White Plains, New York



**HON. CHARLES D. WOOD**  
**Justice of the Supreme Court**

To: All Parties by NYSCEF