

Pfirman v Village of New Paltz
2023 NY Slip Op 35308(U)
March 30, 2023
Supreme Court, Ulster County
Docket Number: Index No. EF2020-1154
Judge: David M. Gandin
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER-----
DAVID PFIRMAN and JOYCE PFIRMAN,
Plaintiffs,**DECISION AND ORDER**
Index No. EF2020-1154

-against-

Present:
Hon. David M. Gandin, JSCVILLAGE OF NEW PALTZ and TOWN OF NEW PALTZ,
Defendants.

The following papers were read and considered on defendants' motions for summary judgment:

1. Notice of Motion;
2. Statement of Material Facts;
3. Affidavit in Support with exhibits A-S;
4. Memorandum of Law;
5. Affirmation in Opposition with exhibits A-U;
6. Reply Affidavit;
7. Notice of Motion;
8. Affidavit in Support with exhibits A-R;
9. Affirmation in Support (Branco);
10. Affirmation in Support (Terwilliger);
11. Affirmation in Support (Coddington);
12. Memorandum of Law in Support;
13. Statement of Material Facts; and
14. Affirmation in Opposition with exhibits A-O;

This is a negligence action in which plaintiffs seeks damages for injuries David Pfirman ("plaintiff") allegedly sustained in a bicycle accident on August 4, 2019 on Henry W. DuBois Drive in New Paltz, New York. Plaintiff claims that his front tire struck a pothole causing him to be thrown to the ground. He maintains that defendants Town of New Paltz ("the Town") and Village of New Paltz ("the Village") were negligent in failing to maintain that portion of the roadway in a reasonably safe condition. Defendants move for summary judgment. The Town asserts that the section of DuBois Drive where the accident occurred was located entirely within the village. The Village seeks summary judgment claiming it did not have prior written notice of the purported dangerous condition.

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law. *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 (1986). If a movant has met this threshold

burden, to defeat the motion the opposing party must present the existence of a triable issue of fact. *Zuckerman v. New York*, 49 NY2d 557, 562 (1980). In deciding a motion for summary judgment, the court must afford the party opposing the motion every inference which may be properly drawn from the facts presented, and consider the facts in a light most favorable to the nonmovant. *Szczerbiak v. Pilat*, 90 NY2d 553 (1997).

In support of its motion the Town submits the pleadings, plaintiff's bill of particulars, deposition testimony, an affidavit of Christopher Marx and other documentary evidence. The foregoing establishes that the pothole which plaintiff alleges caused his accident was located on a portion of DuBois Drive that is a marked bicycle lane and part of the larger Hudson Valley Rail Trail. The Village's Superintendent of Public Works Gene Bleu Terwilliger and Municipal Works Supervisor Robert Coddington both testified at their depositions that the location where the accident occurred was entirely within the boundaries of the Village. Coddington stated that the Village was responsible for repairing and maintaining the roadway and that to his knowledge the Town was never responsible for paving that portion of DuBois Drive. The Town's Highway Superintendent Chris Marx confirms in his affidavit that the Town is not responsible for maintaining roadways in the village. He further states that the Town has never issued permits to any third-party to perform work at the accident site.

The foregoing is sufficient to establish the Town's *prima facie* entitlement to judgment as a matter of law. "A municipality will not be held liable for the negligent design or maintenance of a roadway it does not own or control in any way." *Kovalsky v. Vil. of Yaphank*, 235 AD2d 459, 460 (2d Dept 1997). In opposition, plaintiffs fail to raise a triable issue of fact demonstrating that the Town owed plaintiff a duty to maintain the roadway in a reasonably safe condition. Plaintiffs' reliance on information obtained from the Town's website which stated that the Town maintains all of DuBois Drive fails to create a material issue of fact. Town Supervisor's secretary Katherine Preston testified at her deposition that she made this entry in error and that after she learned of it she removed the information. The Town and the Village representatives confirmed that this was erroneous information. Moreover, the "Transportation Project Report" which plaintiff asserts demonstrates the Town committed to maintaining the roadway in exchange for funding is signed and dated April 16, 2021, well after plaintiff's accident. Wherefore, it is

ORDERED that the Town of New Paltz's motion for summary judgment is granted and plaintiff's claims against it are dismissed.

In support of its motion the Village has submitted the pleadings, the deposition testimony, photographic and documentary evidence, and the affidavits of Village Clerk Nancy Branco, Gene Bleu Terwilliger and Robert Coddington. Village Code § 146-1 states in relevant part:

No civil action shall be maintained against the Village of New Paltz, or the Superintendent of Public Works of the Village of New Paltz, or any of the officers, agents or employees of the Village of New Paltz, for damages or injuries to person or property sustained by reason of any highway, bridge, culvert, or any other property

owned by the Village of New Paltz, being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed conditions of such highway, bridge, culvert, or any other property owned by the Village of New Paltz was actually given to the Village Clerk of the Village of New Paltz or Superintendent of Public Works of the Village of New Paltz and that there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of

Village Clerk Nancy Branco's affidavit states that she reviewed the pertinent records maintained by the Village and that her office did not receive written notice of any defect on DuBois Drive prior to plaintiff's August 4, 2019 accident. The foregoing is sufficient to establish the Village's *prima facie* entitlement to dismissal of plaintiff's claims based on a lack of prior written notice. "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." *Palka v. Vil. of Ossining*, 120 AD3d 641, 641 (2d Dept 2014).

In opposition, the plaintiff fails to establish a triable issue of material fact. The Court rejects plaintiff's challenge to the legality of New Paltz Village Code § 146-1. Prior written notice provisions are constitutional. See *Holt v. Tioga County*, 56 NY2d 414 (1982). Plaintiff fails to rebut the Village's initial showing that it did not have prior written notice of any defect on the roadway. Even if the presence of painted markings on the roadway near the accident site demonstrated that the Village actually knew of the dangerous condition, such knowledge does not satisfy the prior written notice requirement in the Village Code. See *Velho v. Vil. of Sleepy Hollow*, 119 AD3d 551 (2d Dept 2014).

There is also no evidence in the record that the Village obtained a benefit from some special use of the valve or that it affirmatively created the dangerous condition. Records from 2009 pertaining to the Village hiring a third-party to pave DuBois Drive do not demonstrate that the complained of condition arose immediately upon installation. See *Yarborough v. City of New York*, 10 NY3d 726 (2008); *Beiner v. Vil. of Scarsdale*, 149 AD3d 679 (2d Dept 2017). Moreover, Public Works Superintendent Terwilliger's affidavit states that in the center of the pothole is a water valve cap which services the nearby Briarwood Condominium development. Terwilliger asserts that the Village does not install water systems on village roadways which service non-village owned structures. He maintains that the valve and cap which covers it were installed by the condominium developers in the 1980s. To the extent that plaintiff asserts that the valve cap not being flush with the roadway constituted a dangerous condition, Terwilliger states that the Village took no affirmative action to change the vertical position of the cap relative to the road surface after its installation. Based on the foregoing, it is

ORDERED that the Village's motion for summary judgment is granted and plaintiff's claims against it are dismissed.

The foregoing constitutes the decision and order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: March 30, 2023
Kingston, New York

ENTER:



DAVID M. GANDIN, J.S.C.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty (30) days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty (30) days thereof.