

Preston v Town of Huntington
2024 NY Slip Op 35651(U)
October 8, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 609920/2017
Judge: Thomas F. Whelan
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SHORT FORM ORDER

INDEX No. 609920/2017
 CAL. No. 202301608MV

SUPREME COURT - STATE OF NEW YORK
 I.A.S. PART 36 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
 Justice of the Supreme Court

MOTION DATE 4/5/24
 ADJ. DATE 6/27/24
 Mot. Seq. # 003 MG; CASEDISP

-----X
 MICHAEL PRESTON,

Plaintiff,

- against -

TOWN OF HUNTINGTON and COUNTY OF
 SUFFOLK,

Defendants.
 -----X

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Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendant Town of Huntington, filed on February 16, 2024; Answering Affidavits and supporting papers by plaintiff, filed on March 26, 2024; Replying Affidavits and supporting papers by defendant Town of Huntington, filed on June 26, 2024; Other ; it is

ORDERED that the motion by defendant Town of Huntington for summary judgment dismissing the complaint is granted.

Plaintiff Michael Preston commenced this action to recover damages for personal injuries he allegedly sustained as a result of a single-vehicle accident, which occurred on Bellerose Avenue, in the Town of Huntington on April 29, 2016, when plaintiff's vehicle left the roadway and collided with a guard rail. The complaint alleges, among other things, that defendant Town of Huntington was negligent in its construction, maintenance and design of the subject guard rail (also referred to herein as "guide" rail).

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The Town now moves for summary judgment dismissing the complaint. The Town contends, in part, that plaintiff's negligence was the sole proximate cause of his accident, that it did not receive prior written notice of the claimed defective or dangerous condition, that it did not affirmatively create the alleged dangerous or defective condition, and that plaintiff's notice of claim and pleadings are defective. In support of its motion, the Town submits, among other things, the certified police report, the pleadings, plaintiff's General Municipal Law § 50-h hearing transcript, the transcripts of the deposition testimony of the plaintiff, Richard Scheffler, Ralph Marino and Scott Spittal, and the affidavits of Suzanne DiPietro and Diana Esposito. In opposition, plaintiff contends that triable issues of fact exist and that there can be more than one proximate cause of an accident. Plaintiff submits the affirmation of counsel, the affirmation of Nicholas Bellizzi, P.E., and the notice of claim served upon the Town. In reply, the Town submits the affirmation of Thomas Mazzola, P.E. By stipulation dated August 29, 2018, plaintiff discontinued the action against the County of Suffolk.

Plaintiff testified that on April 29, 2016, as his vehicle was heading westbound on Bellerose Avenue, he fell asleep while driving, crossed over the yellow line separating the opposing lanes of travel, and struck a guard rail situated to the south, along the eastbound lane of travel on Bellerose Avenue. He further testified that had the guard rail not been present when he crossed over the eastbound lane of traffic, he probably would have hit a house that he believed was being protected by that guard rail. He stated that as a result of the collision, the guard rail cut through the sheet metal of his vehicle and "sliced" right through the front driver side of the car. He stated that he had been informed by his eldest son that the caps on the guard rail were installed improperly and that, other than him falling asleep, he does not know of any other reason why the accident occurred.

Richard Scheffler testified that he is presently employed by the Town of Huntington as a highway construction coordinator. He explained that a guide rail is "a metal structure, kind of like a fence, that is put there to help prevent an automobile from leaving the roadway at that location." He testified that the Town of Huntington Highway Department would install the guide rails along Bellerose Avenue. Scheffler further testified that he conducted a search of the Town's records for written complaints regarding the subject guide rail, and that such search did not reveal any complaints.

Ralph Marino testified that he presently is employed by the Town as a supervisor in the Highway Department, and that he was employed by the Town as a maintenance mechanic in April 2016. He testified that as a maintenance mechanic his duties included repairing any guide rails on Bellerose Avenue that may have been hit. He testified that there was no other regular inspection and/or maintenance of guide rails on Bellerose Avenue during the time he was a maintenance mechanic.

Scott Spittal testified that he is presently employed by the Town as the Director of Transportation and Traffic Safety. He testified that since he began his employment in 2018, he was unaware of any guide rail installations in the Town. He stated that prior to his work with the Town, he designed guide rail systems, and that, as an engineer, he followed the American Association of State Highway Transportation Officials (AASHTO) roadside guide design manual which is the national standard for engineers to use. He explained that those guidelines "provide for guidance or assessing the need for and design of roadside devices to protect the traveling public from...hitting hazardous fixed objects or

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untraversable slopes within the clear zone.” He further explained that the “main purpose of AASHTO is to assess the need for guide rails.”

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). As the court’s function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (see *Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *O’Neill v Town of Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 487 NYS2d 316).

A municipality is not an insurer of the safety of its roadways (*Tomassi v Town of Union*, 46 NY2d 91, 412 NYS2d 842 [1978]; *Martinez v County of Suffolk*, 17 AD3d 643, 794 NYS2d 98 [2d Dept 2005]; *Stanford v State of New York*, 167 AD2d 381, 561 NYS2d 796 [2d Dept 1990]). “The design, construction and maintenance of public highways is entrusted to the sound discretion of municipal authorities and so long as a highway may be said to be reasonably safe for people who obey the rules of the road, the duty imposed upon the municipality is satisfied” (*Tomassi v Town of Union*, 46 NY2d 91, 97, 412 NYS2d 842). “[N]o liability will attach unless the ascribed negligence of the [municipality] in maintaining its roads in a reasonable condition is a proximate cause of the accident” (*Martinez v County of Suffolk*, 17 AD3d 643, 644, 794 NYS2d 98, quoting *Stanford v State of New York*, 167 AD2d 381, 382, 561 NYS2d 796).

The Town established its *prima facie* entitlement to judgment as a matter of law by demonstrating that its conduct was not a proximate cause of the plaintiff’s accident (*Feeney v Holeman*, 73 AD3d 848, 900 NYS2d 451 [2d Dept 2010]; *Martinez v County of Suffolk*, 17 AD3d 643, 794 NYS2d 98; *Perry v Kazolias*, 302 AD2d 575, 756 NYS2d 256 [2d Dept 2003]; *Stanford v State of New York*, 167 AD2d 381, 561 NYS2d 796; *Muhldar v Town of Goshen*, 231 AD2d 615, 647 NYS2d 975 [2d Dept 1996]). The Town submits the plaintiff’s General Municipal Law § 50-h hearing and deposition transcripts. Plaintiff testified that he fell asleep while operating his motor vehicle in the westbound lane of Bellerose Avenue, failed to stay in his lane as he crossed over the opposing lane of travel, and subsequently collided with the guard rail situated alongside the eastbound lane of Bellerose Avenue. Plaintiff further testified that he did not know of any other reason why the accident occurred. The conduct of plaintiff “severed any connection between the Town’s alleged negligence and the

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happening of the accident” (*Perry v Kazolias*, 302 AD2d 575, 575, 756 NYS2d 256; see *Feeney v Holeman*, 73 AD3d 848, 900 NYS2d 451).

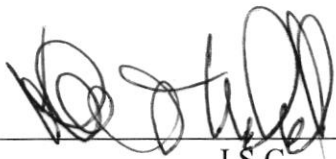
In opposition, plaintiff failed to raise any triable issue of fact as to the proximate cause of his accident (*Feeney v Holeman*, 73 AD3d 848, 900 NYS2d 451). Plaintiff submits the affirmation of Nicholas Bellizzi, P.E., a licensed professional engineer, board certified in forensic engineering. Mr. Bellizzi states that the subject guide rail had a substandard height and that the guide rail ends had “blunt end caps.” He states that the date of the original guide rail installation had not been provided by the Town and it is unknown what design plans and specifications were used by the Town when the guide rails were originally installed. Mr. Bellizzi affirms that the outdated blunt end cap of the subject guide rail was “well documented, studied and evaluated in the Highway Engineering Profession and was determined to be a known and well recognized serious adverse highway safety issue in need of replacement and remediation.” The affirmation of Mr. Bellizzi does not establish that any alleged negligence by the Town in the installation or maintenance of the subject guide rail was a proximate cause of plaintiff’s accident.

As the Town has established that it was not a proximate cause of plaintiff’s accident, the parties’ remaining contentions have been rendered academic.

Accordingly, the motion by defendant Town of Huntington for summary judgment dismissing the complaint is granted.

Dated: _____

10/8/24



J.S.C.

☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION