

Langona v Village of Garden City

2017 NY Slip Op 33367(U)

December 15, 2017

Supreme Court, Nassau County

Docket Number: Index No. 604559/2017

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

NICOLE LANGONA,

Plaintiff,

- against -

VILLAGE OF GARDEN CITY, TOWN OF
HEMPSTEAD and COUNTY OF NASSAU,

Defendants.

TRIAL / IAS PART 31
NASSAU COUNTY

Action No. 1
Index No. 604559/2017

Motion Sequence No. 001

ALYSSA ANDINO,

Plaintiff,

- against -

NICOLE LANGONA, KIMBERLY
LANGONE, COUNTY OF NASSAU, TOWN
OF HEMPSTEAD and INCORPORATED
VILLAGE OF GARDEN CITY,

Defendants.

TRIAL / IAS PART 31
NASSAU COUNTY

Action No. 2
Index No. 605380/2017

Motion Sequence No. 001, 002

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2, 3</u>
Answering Affidavits	<u>4, 5, 6</u>
Replying Affidavits	<u>7, 8, 9</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The plaintiff Nicole Langona (Action No. 1) alleged a defect and the design, maintenance, control and paving of the right lane, specifically a large dip in the roadway of Clinton Road, located in the Village of Garden City, Town of Hempstead, County of Nassau, State of New York caused the accident on March 21, 2016. Nicole Langona asserts operating a motor vehicle when that a defect and the design condition caused lost of control of the motor vehicle, and the motor vehicle struck a tree.

The plaintiff Alyssa Andino (Action No. 2) alleged being a front seat passenger in a Jeep motor vehicle operated by the defendant Nicole Langona on March 21, 2016, in the Village of Garden City, Town of Hempstead, County of Nassau, State of New York. Alyssa Andino claimed Nicole Langona lost control of the Jeep because of dangerous or dips and depressions in the defective roadway surface, and hit a tree.

This Court previously granted the motion (Action No. 2, index number 605380/17, Sequence 003) by the defendants Nicole Langona and Kimberly Langona for consolidation or a joint trial between Supreme Court, County of Nassau, index numbers 605380/17 and 604559/17 in an order dated November 29, 2017. The Nassau County Clerk's Office entered that court order on December 5, 2017, and the defendant Incorporated Village of Garden City and Nicole Langona and Kimberly Langone served the other parties with the court order and notices of entry on December 6, 2017.

The Village moves (Action No. 1, Sequence 001) for an order, dismissing the plaintiff's complaint and all cross-claims as the Village did not own, operate, repair, maintain or have jurisdiction over the alleged location of the plaintiffs incident. The Village also moves for an order, pursuant to CPLR §3212 granting the Village summary judgment and dismissing plaintiff's complaint and all cross-claims against it upon the grounds that THE VILLAGE was not provided with prior written notice of the alleged defective or hazardous condition, which is alleged to have given rise to the plaintiff's claims, as required pursuant to General Municipal Law § 50-e, CPLR 9804, Village Law § 6-628 and Village of Garden City Code §§ 27-1, 27-3 and 27-4.

The Village moves (Action No. 2, Sequence 001) for an order, dismissing the plaintiff's complaint and all cross-claims as the Village did not own, operate, repair, maintain or have jurisdiction over the alleged location of the plaintiffs incident. The Village also moves for an order, pursuant to CPLR §3212 granting the Village summary judgment and dismissing plaintiff's complaint and all cross-claims against it upon the grounds that the Village was not provided with prior written notice of the alleged defective or hazardous condition, which is alleged to have given rise to the plaintiff's claims, as required pursuant to General Municipal Law § 50-e, CPLR 9804, Village Law

§ 6-628 and Village of Garden City Code §§ 27-1, 27-3 and 27-4.

The defendant Town of Hempstead (Action No. 2, Sequence 002) cross moves for an order pursuant to CPLR 3212 granting summary judgment to the Town dismissing the plaintiff's complaint, and all cross claims against the Town. The Town asserts it was not provided with prior written notice of the alleged defective or hazardous condition, which is alleged to have given rise to the plaintiff's claims, as required pursuant to General Municipal Law § 50-e. The Town also maintains it did not own, operate, repair, maintain or have jurisdiction over the alleged location of the plaintiffs incident.

Nicole Langona and Alyssa Andino oppose the motion and cross motion, respectively. The Village and the Town reply to that opposition, respectively.

The Court determines, contrary to the plaintiffs' assertions, the three motions are not premature, (*Arrucci v. City of New York*, 45 A.D.3d 617, 846 N.Y.S.2d 269 [2d Dept 2007]). Here, Nicole Langona and Alyssa Andino failed to establish what additional facts might be disclosed which would show that a triable issue of fact existed and that facts essential to justify opposition to these motions were exclusively within the knowledge and control of the Village and the Town concerning whether the Village and the Town received prior written notice of the alleged condition, did work on the roadway or that either municipality received a benefit from the special use of the roadway (see CPLR 3212[f]). Moreover, Nicole Langona and Alyssa Andino had opportunity to exercise access to the public records of the Village and the Town regarding the site (*Fenko v. Mealing*, 43 A.D.3d 856, 841 N.Y.S.2d 378 [2d Dept 2007]). Hence, facts existed for both plaintiffs which could have been stated here. The affidavits submitted by the Village and the Town, as well as the map and photographs are not vague and conclusory assertions by the Village and the Town concerning whether the Village and the Town received prior written notice of the alleged condition, did work on the roadway or that either municipality received a benefit from the special use of the roadway. While there are two exceptions to the prior written notice requirement, the plaintiffs fail to provide evidence showing the Village and the Town have jurisdiction over the alleged location of the plaintiffs incident, did any work on the roadway or that either municipality received a benefit from the special use of the roadway.

The Court determines the Village and the Town establish prima facie entitlement to judgment as a matter of law, respectively. Here, the Village and the Town proffer evidence in admissible form demonstrating neither municipality received prior written notice of the alleged condition, own, operate, repair, maintain nor have jurisdiction over the alleged location of the plaintiffs incident, did any work on the roadway or that either municipality received a benefit from the special use of the roadway (General Municipal

Law § 50-e, CPLR 9804, Village Law § 6-628, Town Law and Village of Garden City Code §§ 27-1, 27-3 and 27-4). In opposition, Nicole Langona and Alyssa Andino fail to raise a triable issue of fact regarding the liability of either the Village or the Town, respectively.

ORDERED, ADJUDGED and DECREED that the motion by the Village of Garden City (Action No. 1, Sequence 001) is GRANTED awarding the Village of Garden City summary judgment and dismissing the plaintiff's complaint and all cross-claims against the Village of Garden City, and it is also,

ORDERED, ADJUDGED and DECREED that the motion by the Incorporated Village of Garden City (Action No. 2, Sequence 001) is GRANTED awarding the Incorporated Village of Garden City summary judgment and dismissing the plaintiff's complaint and all cross-claims against the Village of Garden City, and it is further,

ORDERED, ADJUDGED and DECREED that the motion by the Town of Hempstead (Action No. 2, Sequence 002) is GRANTED awarding the Town of Hempstead summary judgment and dismissing the plaintiff's complaint and all cross-claims against the Town of Hempstead, and it is further

This decision will constitute the decision and order of the Court. All applications not specifically addressed are denied.

So ordered.

Dated: **December 15, 2017**

ENTERED

ENTER:

DEC 18 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE



J. S. C.

NOT FINAL DISPOSITION