

**Harron v Freeport Union Free Sch. Dist.**

2017 NY Slip Op 33408(U)

December 21, 2017

Supreme Court, Nassau County

Docket Number: Index No. 607642/17

Judge: Randy Sue Marber

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Present: HON. RANDY SUE MARBER  
JUSTICE

\_\_\_\_\_  
AUDREY HARRON, X

Plaintiff,

-against-

FREEPORT UNION FREE SCHOOL DISTRICT,  
VILLAGE OF FREEPORT and TOWN OF  
HEMPSTEAD

Defendants.

\_\_\_\_\_  
X

Papers Submitted:

Notice of Motion.....X

Affirmation in Opposition.....X

Reply Affirmation.....X

TRIAL/IAS PART 10

Index No.: 607642/17

Motion Sequence...01

Motion Date... 10/10/17

Upon the foregoing papers, the motion by the Defendant, VILLAGE OF FREEPORT (hereinafter the "VILLAGE"), seeking an Order, pursuant to CPLR §§ 3211 (a) (2) and (a) (7), dismissing the Plaintiff's Complaint against the VILLAGE in its entirety, is determined as hereinafter provided.

In the instant action, the Plaintiff claims that, on August 28, 2016, she was caused to fall off her bicycle due to a dangerous, defective uneven, poorly maintained, and hazardous condition of the sidewalk located along the east side of South Long Beach Avenue, approximately ninety (90) feet south of the intersection of Archer Avenue (hereinafter the "subject location"), in Freeport (See the Summons and Verified Complaint attached to the Notice of Motion as Exhibit "A").

The Defendant, VILLAGE, moves to dismiss the Plaintiff's complaint in its entirety on the grounds that the Plaintiff failed to satisfy a condition precedent to the commencement of this action, as the Plaintiff failed to serve the VILLAGE with a Notice of Claim, pursuant to General Municipal Law ("GML") § 50-e.<sup>1</sup>

In support of its position, the VILLAGE proffers the Affidavit of Lisa M. DeBourg, the Deputy Village Clerk employed by the VILLAGE (*See* the Affidavit of Lisa M. DeBourg attached to the Notice of Motion as Exhibit "C"). Ms. DeBourg attests that she conducted a search of all notices of claim received by the Village for the period including and subsequent to August 20, 2016 and August 28, 2016. After a review of the records maintained by the Village's Clerk's Office, Ms. DeBourg attests that the VILLAGE did not receive a notice of claim for an accident on August 20, 2016 or August 28, 2016 involving the Plaintiff at the subject location (*Id.*).

In opposition, counsel for the Plaintiff contends that a notice of claim was properly and timely served upon the Defendant, VILLAGE. The Plaintiff submits an Affidavit from Bethanne Roth, an employee of the Plaintiff's attorney (*See* the Affidavit of Bethanne Roth attached to the Plaintiff's Affirmation in Opposition as Exhibit "B"). Ms. Roth attests that she mailed the notice of claim to "the Village of Freeport, 46 N. Ocean Avenue Freeport, NY 11520" via certified mail, return receipt requested, on September 29, 2016. Further, counsel for the Plaintiff proffers a "green return card" from its mailing of

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<sup>1</sup> The Defendant, VILLAGE, also contends that the Plaintiff failed to plead the required service of the notice of claim in the Verified Complaint, pursuant to GML § 50-i. However, based upon a review of the Plaintiff's Amended Verified Complaint, this Court finds that the pleading requirement of GML § 50-i was fulfilled (*See* the Plaintiff's Amended Verified Complaint attached to the Defendant's Reply Affirmation as Exhibit "D").

the notice of claim, which bears a date stamp of "04 Oct '16" and a signature of receipt by "Matos"

In reply, counsel for the VILLAGE contends that the Plaintiff's submissions in opposition are insufficient to demonstrate proper service of a notice of claim upon the VILLAGE, in compliance with GML §§ 50-e (3) (a) and (b). Here, counsel for the VILLAGE argues that the notice of claim was not properly addressed, as it only generally indicated the "Village of Freeport" and did not specify a department or office. Moreover, the individual, "Matos", who signed the receipt of certified mailing is not an authorized person designated by law to accept service on behalf of the VILLAGE.

It is well settled that, in order to commence an action against a municipality, a claimant must serve notice of claim within ninety days of the alleged injuries (GML § 50-e; *Morales v. New York City Transit Authority*, 15 A.D.3d 580, 581 (2d Dept. 2005)). Pursuant to GML § 50-e (3) (a), a notice of claim shall be served "to the person designated by law as one to whom a summons in an action..." may be delivered. CPLR § 311 (6) prescribes that service of a summons upon a village may be made to "the mayor, clerk, or any trustee".

Based on a review of the evidence proffered, it appears that the Plaintiff failed to properly serve a notice of claim on the VILLAGE, as required pursuant to GML § 50-e. Therefore, an action against the Defendant, VILLAGE, cannot be maintained.

Accordingly, it is hereby

**ORDERED**, that, the Defendant, VILLAGE's, motion seeking dismissal of the Plaintiff's complaint, pursuant to CPLR § 3211, on the grounds that no action can be

maintained against the VILLAGE pursuant to GML § 50-e, since a Notice of Claim was required to have been served by the Plaintiff as a condition precedent to the instant action, is **GRANTED**, and it is further;

**ORDERED**, that, the Plaintiff's claims, as against the Defendant, VILLAGE, are hereby **DISMISSED**.

This constitutes the decision and Order of the court.

DATED: Mineola, New York  
December 21, 2017

  
\_\_\_\_\_  
Hon. Randy Sue Marber, J.S.C.

**ENTERED**  
DEC 29 2017  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE