

DECISION AND ORDER

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

PRESENT: HON. STEVEN M. JAEGER

X

TRIAL/IAS PART 33

DAVID JOHNSON,

XXX

Plaintiff,

Index #: 600020/2019
Motion Seq. Nos.: 03,04,05,06
Motions Submitted:

-against-

**VALLEY EAST PROPERTIES LLC, THE COUNTY
OF NASSAU and THE TOWN OF HEMPSTEAD,**

Defendants.

X

Papers submitted on the motions:

Notices of Motion	x
Defendants	
Affirmations in Opposition	x
Plaintiff	
Reply Affirmation	x
Defendants	

Upon the foregoing papers, Defendant Valley East Properties LLC's motion to strike Plaintiff's complaint pursuant to CPLR § 3124 and/or CPLR §3126; Defendant the County of Nassau's Motion for Summary Judgment dismissing Plaintiff's Complaint pursuant to CPLR §3212; Defendant Valley East Properties LLC's Motion for Summary Judgment dismissing Plaintiff's Complaint pursuant to CPLR §3212; and Defendant the

Town of Hempstead's Motion for Summary Judgment dismissing Plaintiff's Complaint pursuant to CPLR §3212 are consolidated for disposition and decided as follows.

Plaintiff David Johnson ("Plaintiff") sustained injuries to his right knee and quadriceps tendon on September 30, 2018 when he tripped and fell on the sidewalk in front of the Chase Bank located on 925 Hempstead Turnpike in Franklin Square (the "premises"). Defendant Valley East Properties ("Valley East") is the owner of the building located on the premises, which is located within the County of Nassau ("County") and the Town of Hempstead ("Town").

Plaintiff has stated that on September 30, 2018, he had attended services at a nearby church. Following the services, he went to eat lunch at the Chinese Restaurant across from the accident location. After lunch, he walked from the restaurant to the bank to retrieve his car, which was parked in the bank parking lot. Plaintiff avers that after stepping up onto the sidewalk, he tripped and fell on the uneven level of the sidewalk where the cement and brick met.

Plaintiff thereafter commenced these actions against Valley East, the County and The Town for their negligence in the ownership and/or maintenance of the sidewalk. Valley East, the County, and the Town, in their motions for summary judgment, have all adduced testimonial and other evidence that sufficiently demonstrates that they did neither owned nor maintained the sidewalks in question, and, in the case of the County and Town, that they had no prior notice of the defects in the sidewalk. In addition, Valley East argues that neither the Nassau County Code nor the Hempstead Town Code imposes tort liability

on the owner of a property for injuries caused on a sidewalk abutting the property. The County and Town further argue that the road in question, Hempstead Turnpike, is a state road that they are not responsible for maintaining.

Plaintiff, in opposition to all of the defendants' motions for summary judgment, argues that New York State Highway Law §140(18) makes the Town responsible for the maintenance of the sidewalks abutting a state highway.

Defendants Valley East, the County and the Town are entitled to summary judgment dismissing plaintiff's complaint. Each demonstrated, through sufficient evidence, a prima facie entitlement to summary judgment by showing that they neither owned nor maintained the property in question. In addition, Valley East showed that neither the County Code nor the Town Code imposed liability on it for injuries on sidewalks abutting their properties and the County and Town showed that they had no notice of the defect in question.

Plaintiff, in opposition, failed to tender evidence that would show the existence of a material issue of fact sufficient to defeat summary judgment (see, Alvarez v Prospect Hospital, 68 NY3d 320 (1986)). Moreover, insofar as Plaintiff argues that Highway Law §140(18) imposes responsibility on the Town for maintaining the sidewalk, that section of the Highway Law pertains to the Town alone, not Valley East or the County. And, in any event, while the Town may be responsible for the maintenance of the sidewalk by operation of state law, it is still incumbent on the Plaintiff to show that the Town had prior written notice of the defect and failed to act on it (see, Bloch v Potter, et. al., 204 AD2d 672 (2d Dept.1994)).

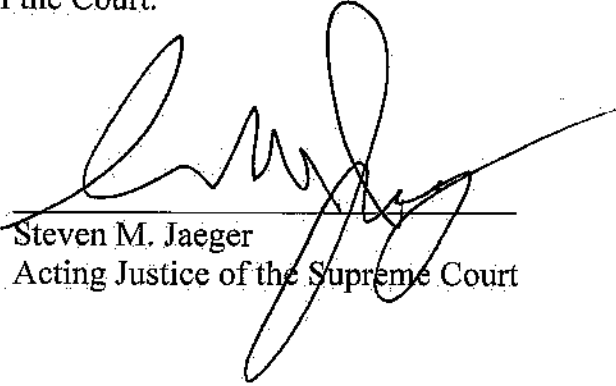
Therefore, it is

ORDERED that Defendants Valley East Properties LLC's, the County of Nassau's, and the Town of Hempstead's motions for summary judgment pursuant to CPLR 3212 dismissing Plaintiff's complaint are **GRANTED**.

All applications not specifically addressed herein are **DENIED**.

This constitutes the decision and order of the Court.

DATED: July 15, 2021
Mineola, New York



Steven M. Jaeger
Acting Justice of the Supreme Court