

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

P R E S E N T:

**HON. ORAZIO R. BELLANTONI**  
**JUSTICE OF THE SUPREME COURT**

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ANNA GUIMARAES,

Plaintiff(s),

- against -

VILLAGE OF MAMARONECK, ANSWERING,  
SHIPPING AND POSTAL, ETC. INC., AND 180  
EAST PROSPECT, LLC,

Defendant(s).

**ORDER**

Index No.: 69984/2014

Motion Date: 6/15/16

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Defendant Village of Mamaroneck (defendant)<sup>1</sup> moves for an order, granting summary judgment in its favor.

The following papers were read:

Notice of Motion (#002), Affirmation, and Exhibits (8)	1-10
Affirmation in Opposition and Exhibits (4)	11-15
Notice of Motion (#003), Affirmation, and Exhibits (8)	16-25
Affirmation in Reply	26

By way of background, plaintiff commenced this action for personal injuries, allegedly suffered on December 9, 2013 as a result of a slip and fall on snow and/or ice on the sidewalk/walkway adjacent to the municipal parking lot on Philip Park Road in the Village of Mamaroneck. Defendant now moves for summary judgment.

On a motion for summary judgment, the Court is to determine whether triable issues of fact exist or whether judgment can be granted to a party on the proof submitted as a matter of law (*see Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The movant must set forth a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).


<sup>1</sup> The parties previously stipulated to discontinue the instant action as against defendants Answering, Shipping And Postal, Etc. Inc., and 180 East Prospect, LLC.

In support of the motion, defendant notes that, at the time of the accident, there was a statute in place, which bars any action against it in consequence of the existence of snow or ice upon any sidewalk unless prior written notice of the condition was actually provided to defendant. Defendant produces evidence sufficient to establish that it received no written notice of the subject condition prior to plaintiff's alleged accident and that there is no evidence that defendant created the subject condition.

Based hereon, defendant has made a *prima facie* showing (see *Moncrieffe v City of White Plains*, 115 AD3d 915, 916 [2d Dept 2014]; *Groninger v Vil. of Mamaroneck*, 67 AD3d 733, 733-34 [2d Dept 2009], *affd*, 17 NY3d 125 [2011]). As such, the burden of going forward shifts to the opponent of the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 557 [1980]). In response, plaintiff does not oppose the motion on the merits, but argues that the motion should be denied pending the completion of discovery in a related action with which plaintiff seeks to consolidate the instant action.

Plaintiff has failed to establish the existence of a material issue of fact or otherwise present a basis to deny defendant's motion. CPLR 3212 (f) empowers the Court to deny or order a continuance of a motion for summary judgment "[s]hould it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated . . . ." However, "[t]he mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion" (*Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760 [2d Dept 2006]). Here, plaintiff has offered nothing more than speculation that discovery in the related action might yield evidence against defendant, which is insufficient to deny the instant motion. Accordingly, defendant's motion for summary judgment is granted and plaintiff's motion to consolidate is denied as moot.

Dated: September 23, 2016  
White Plains, New York

  
HON. GRAZIO R. BELLANTONI  
Justice of the Supreme Court

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