

SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,
Justice

TRIAL/IAS, PART 24
NASSAU COUNTY

PAULETTE M. KELLER AND NEIL R. KELLER,

Decision and Order

Plaintiff,

MOTION SUBMITTED:

November 4, 2009

-against-

MOTION SEQUENCE:07

INDEX NO. 209000-07

**VICTOR S. RICH, THE COUNTY OF NASSAU
AND THE VILLAGE OF OLD WESTBURY,**

Defendant.

The following papers and the attachments and exhibits thereto have been read on this motion:

Notice of Motion for Summary Judgment	1
Affirmation in Opposition	2
Affirmation in Opposition	3
Affirmation in Opposition	4
Reply Affirmation	5

Defendant County of Nassau ("County") moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint and cross claims insofar as asserted against it. For the reasons that follow, the motion is granted.

This action to recover damages for personal injuries, etc., arises from a motor vehicle accident that occurred on September 24, 2006, in the Village of Old Westbury, Nassau County, at the intersection of Wheatley Road and the North Service Road of the Long Island Expressway. The accident involved a collision between an automobile operated by plaintiff Neil R. Keller ("Keller") and an automobile operated by defendant Victor S. Rich ("Rich").

The underlying facts of the accident are largely undisputed. At the time of the collision, the Keller vehicle was traveling northbound on Wheatley Road at approximately 20-25 m.p.h. At

the same time, the Rich vehicle was traveling westbound on the North Service Road of the Long Island Expressway at approximately 40 m.p.h. Both vehicles were attempting to proceed straight across the intersection, which is controlled by a traffic signal or signals. Both drivers were familiar with the intersection. The traffic signals located at the intersection are maintained by New York State and were functioning properly on the date of the accident. The only disputed issue arises from the fact that both drivers claim to have been facing a steady green traffic signal as they proceeded into the intersection.

Plaintiffs' theory of liability as to the County of Nassau is based upon Keller's contention that as he approached the intersection, his view of westbound traffic on the North Service Road was obstructed - first by a wall and fence that ran along the overpass to his right, and then, after the wall ended, by an "overgrowth" of trees and shrubs located on the south shoulder area of the North Service Road. It is not contended, however, that the alleged overgrowth in any way obscured either driver's view of the traffic signal or signals at the intersection. Citing, *inter alia*, PJI 2:79, plaintiffs argue that the County's failure to trim the overgrowth deprived Keller of a "last-clear-chance" to avoid the collision, which somehow constituted a proximate cause of the accident. Plaintiffs theory, however, is contradicted by recent and controlling appellate authority.

In *Martinez v County of Suffolk* (17 AD3d 643 [2d Dept 2005]), an action to recover damages for personal injuries sustained as the result of a motor vehicle accident, plaintiffs were injured when a truck passing a red light crashed into their car as it was entering into the intersection of Washington Avenue and the Long Island Expressway's South Service Road in Brentwood. The plaintiffs alleged that the defendant County of Suffolk was negligent in failing to trim the foliage growing along the side of Washington Avenue, and that the overgrown foliage obstructed the view of the plaintiff driver. The defendant County of Suffolk appealed an order of the Supreme Court, Suffolk County which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

The Appellate Division reversed the order and dismissed the claims against the defendant county noting that:

A county is not the insurer of the safety of its roads, and 'no liability will attach unless the ascribed negligence of the [county] in maintaining its roads in a reasonable condition is a proximate cause of the accident' (citations omitted).

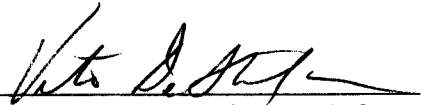
The court found that the sole proximate cause of the accident was the other driver's failure to stop at the red light which, indisputably, was not obstructed by the overgrown foliage, and held that "[u]nder the circumstances, the County's purported negligence cannot be deemed a proximate cause of the plaintiff's injuries (citations omitted)."

At bar, contrary to the contentions of the parties opposing summary judgment, *Martinez v County of Suffolk* is dispositive of the motion.

Accordingly, the County's motion for summary judgment is granted. It is hereby ordered that the complaint and all cross claims insofar as asserted against the County are dismissed.

This constitutes the decision and order of the court.

Dated: December 17, 2009


Hon. Vito M. DeStefano, J.S.C.

ENTERED
DEC 23 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE