

MEMORANDUM

SUPREME COURT, NASSAU COUNTY

In the Matter of the Claim of LEATHIA A. CHEEK and ANDREE CHEEK, Individually, and as the Parent, Guardian and next of kin of LEATHIA A. CHEEK,

Plaintiffs,

-against-

COUNTY OF NASSAU, TOWN OF OYSTER BAY, VINCENT FARINELLA and MARLENE FARINELLA,

Defendants.

BY: Zelda Jonas, J.S.C.

DATED: November 29, 2004

INDEX NO. 1053/03

**MOTION DATE: September 29, 2004
(Motion Seq. No. 5 & 6)**

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The motion by the defendant, Town of Oyster Bay, and the cross-motion by the County of Nassau for summary judgment pursuant to CPLR §3212 are both granted in their entirety.

The plaintiff was allegedly injured when she was struck by a motor vehicle driven

by defendant Farinella while plaintiff was walking on the Sunrise Highway extension, which the police accident report indicates is 50 feet west of the intersection of County Line Road and Sunrise Highway extension in Massapequa (Notice of Motion, Exhibit A). Plaintiffs' complaint against the municipal defendants alleges every possible theory of negligence that a defective, unsafe, and dangerous condition existed with regard to the road without identifying what was that defective and dangerous condition. Plaintiffs further allege improper and defective lighting, improper construction, placement and maintenance of sidewalks, negligent design and construction of the roadway, and failure to provide proper signs and traffic control devices including walk/don't walk signs.

During the deposition of Ray Rubiero, Assistant Director of Traffic Engineering in the County Department of Public Works, Mr. Rubiero testified that he reviewed the New York State construction plans for the Sunrise Highway extension which reveals that the portion of Sunrise Highway extension in question is a state road that is in Suffolk County (Notice of Cross-motion, Exhibit D, pp. 16-17). The affidavit of Richard T. Betz, the Deputy Commissioner of the Department of Public Works for the Town of Oyster Bay, indicates that the Route 27/Sunrise Highway area in question is not within the jurisdiction of the Town of Oyster Bay and that the Town of Oyster Bay never hired any contractor and/or subcontractor to perform work at the subject location. The affidavit of Steven Labriola, the Town Clerk of Oyster Bay, states that a search of the town records for the past five years indicates no complaints were filed with the town concerning any defective condition at said location.

The defendants do not owe a duty to the plaintiffs since neither municipality has jurisdiction of the area that is the subject of the accident, because it is a state road in Suffolk County, and therefore they had no duty to maintain the road (*Schulman v. City of New York*, 190 A.D.2d 663; *DiStefano v. Donahue*, 124 A.D.2d 322). Even if there was a defective condition that existed on the road within the jurisdiction of the municipalities, there were no written notices concerning said condition given to the defendant, Town of Oyster Bay (Town Law §65 a[2]), nor to the defendant, County of Nassau (Nassau County Administrative Code §12-4[e]) (*Amiable v. City of Buffalo*, 93 N.Y.2d 471; *Hampton v. Town of North Hempstead*, 298 A.D.2d 556).

Defendants' motions for sanctions and costs are denied.

Submit judgment on notice.



J.S.C.