SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 14
NASSAU COUNTY

ELI McCALPINE,

Plaintiff(s),

INDEX No. 28076/94

-against-

MOTION DATE: 3/7/00

ROBERT LEGENDRE, JOAN LEGENDRE, RAYMOND LEGENDRE, MARYANNA LEGENDRE AND COUNTY OF NASSAU,

Defendant(s).

MOTION SEQ. No. 2

The following papers read on this motion:
Notice of Motion/Affirmation/Exhibits A-E
Affirmation in Opposition

Defendant COUNTY OF NASSAU seeks an Order granting it summary judgment pursuant to CPLR § 3212, dismissing all claims and cross claims asserted against it. Counsel for plaintiff opposes.

In this action plaintiff alleges that he was injured after he slipped and fell on ice in a parking lot of an OFF TRACK BETTING facility in Freeport, New York on March 14, 1993. Defendant COUNTY seeks summary judgment contending that there is no evidence that the COUNTY owned or maintained the parking lot in question.

The COUNTY provides the sworn testimony of its witness who states that he searched the COUNTY's records for any documents regarding ownership of the property in question, and found none. The witness also testified that he had no knowledge of any lease or business relationship between the COUNTY and OTB. The COUNTY also provides the testimony of defendant LEGENDRE who admitted owning a corporation which acquired the property in question, and who testified that his corporation assumed a lease for the property to OTB.

Thus, the COUNTY seeks dismissal, arguing that there is no evidence of any connection between the COUNTY and the property where the alleged accident occurred.

Counsel for plaintiff opposes the COUNTY's motion contending that there may be a triable question of fact regarding the COUNTY's ownership and/or control of the property. He offers no evidence to rebut that produced by the COUNTY, or to demonstrate that there is any connection between the COUNTY and the parking lot. Nor does he offer any evidence that a further search or investigation would reveal any different results. *Silver v. Brodsky*, 112 A.D.2d 213 (1985).

On a motion for summary judgment the moving party must demonstrate, by evidentiary facts, that he is entitled to judgment as a matter of law, whereupon the burden is shifted to the opponent to show that an issue of fact exists. *Piccolo v. De Carlo*, 90 A.D.2d 609 (1982). The Court finds that the COUNTY has met its initial burden. In opposing this motion for summary judgment, plaintiff's conclusory allegations unsubstantiated by any factual evidence, is insufficient to show that there is a triable issue of fact with regard to the COUNTY's negligence. *Smith v. Johnson Products Co.*, 95 A.D.2d 675 (1983); *Fishman v. Nassau County*, 84 A.D.2d 806 (1981).

On a motion for summary judgment, more is required than disputation, denials and assertions that triable issues exist. *Rae v. Rosenberg*, 67 Misc.2d 881 (1971). Mere conclusions of hope based on unsubstantiated allegations are insufficient to raise a triable issue of fact which would defeat a motion for summary judgment. *Zuckerman v. City of New York*, 49 N.Y.2d 57 (1980); *Monteleone v. Incorporated Village of Island Park*, 123 A.D.2d 312 (2nd Dept. 1986).

Based on the foregoing, the COUNTY's motion for summary judgment dismissing the claims against it, is Granted.

It is, SO ORDERED.

Dated: May 8, 2000

HON. GEOFFREY J. O'CONNELL