

**SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK
Present: Hon. F. Dana Winslow,
J.S.C.**

SCAN

JOSETTE MEEHAN,

Plaintiff,

-against-

**BASHARJ MIRZA a/k/a BASHARD MIRZA,
COUNTY OF NASSAU and TOWN OF
HEMPSTEAD,**

Defendants.

**IAS/TRIAL PART 17
NASSAU COUNTY**

Index No. 01-002986

**Motion Seq: 004,005,006
Motion Date: 10/10/02**

X

X

The following papers having been read on the motion: [numbered 1-6]

**Defendant TOWN's Notice of Motion with Supporting
Papers.....1
Plaintiff's Affirmation in Opposition.....2
Defendant MIRZA's Notice of Cross Motion.....3
Defendant COUNTY's Notice of Cross Motion.....4
Defendant TOWN's Reply Affirmation.....5
Defendant MIRZA's Reply Affirmation.....6**

Motion by defendant Town of Hempstead for an order pursuant to **CPLR 3212** granting it summary judgment dismissing the complaint against it is **granted**.

Cross-motion by defendant Mirza for an order pursuant to **CPLR 3212** granting it summary judgment dismissing the complaint against him is **granted**.

Cross-motion by defendant County of Nassau for an order pursuant to **CPLR 3212** granting it summary judgment dismissing the complaint against it is **granted**.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff on June 26, 2000, when she slipped and fell on the sidewalk in front of

16-18 Wellington Road South in West Hempstead. Plaintiff alleges that there was a difference of approximately two inches in the height elevation of two sidewalk flags and that the sidewalk was in a state of disrepair with loose concrete, cracks and missing concrete. She alleges negligence in the defendant County, Town and adjacent property owner's ownership, operation, management, maintenance and control of the sidewalk.

Dan Davis, the Deputy Commissioner of Highway & General Engineering, attests in his affidavit that Nassau County does not own and accordingly has no jurisdiction over the subject location nor did it perform any work or services there. Indeed, the defendant Town has acknowledged that it owns the sidewalk. The defendant County is entitled to summary judgment (*Gianna v Town of Islip*, 230 AD2d 824).

As for the defendant Town, under §6-3 of the Town of Hempstead Code, no civil action shall be maintained for damages sustained by reason of any defect in a sidewalk unless prior written notice of such condition is served upon the Town. The defendant Town has established via affidavits of George Bush, Compliance Coordinator of the Sidewalk Division of the Department of General Services of the Town of Hempstead, and Sheila Dauscher, Records Access Officer of the Highway Department of the Town of Hempstead, that the defendant Town did not receive prior written notice of the defect; it did not contract to have any maintenance, repair or construction work done there for five years prior to plaintiff's accident; nor did it repair or replace or issue any sidewalk work permits for the site. It is therefor incumbent on plaintiff to establish the existence of an issue of fact as to the defendant Town's notice (*see, Bloch v Potter*, 204 AD2d 672, 674) or to submit competent evidence that the defendant Town affirmatively created the defect (*Gianna v Town of Islip, supra*). The plaintiff has failed to do so and the defendant Town, too, is entitled to summary judgment (*Gianna v Town of Islip, supra*).

As for the Mirza defendants,

“An owner of premises that abut a public sidewalk is not liable to a pedestrian injured as a result of a defect in the sidewalk unless the owner affirmatively caused the defect or negligently constructed or repaired the sidewalk, or caused the defect to occur because of some special use, or unless a statute or ordinance placed an obligation on the owner to maintain the sidewalk and expressly makes

the owner liable for injuries occasioned by the failure to perform that duty." (*Rosetti v. City of Yonkers*, 288 A.D.2d 288, 289, 732 N.Y.S.2d 879.

Defendant Mirza has established that he did not cause the defect in the sidewalk through a special use or otherwise. There is no statute or ordinance which expressly makes him liable for the failure to maintain the sidewalk. In response, the plaintiff has failed to establish the existence of an issue of fact. Defendant Mirza, too, is entitled to summary judgment (*Bloch v Potter*, *supra*, at p. 673).

In sum, the defendants' motions for summary judgment are granted and the complaint is dismissed.

This order constitutes the judgment of this court. This case is dismissed.

Dated:

ENTER:

January 9, 2003



J.S.C.

ENTERED

FEB 19 2003

NASSAU COUNTY
COUNTY CLERK'S OFFICE