

SCA

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

BRIAN COSGROVE, an infant 10 years of age by his
Father and guardian, JAMES COSGROVE and

Plaintiff(s),

- against -

"THE LOONEY BIN" and THE VALLEY STREAM
CHAMBER OF COMMERCE, INC.,

Defendant(s).

TRIAL/IAS PART 20

INDEX NO. 3798/00

MOTION SEQUENCE
NO. 1

MOTION SUBMISSION
DATE: May 30, 2002

The following papers read on this motion:

Notice of Motion

X

Affirmation in Opposition

XX

Upon the foregoing papers, the motion by the defendant The Village of Valley Stream Chamber of Commerce, (hereinafter referred to as Chamber of Commerce) for an Order pursuant to CPLR 3212 dismissing the plaintiff's Verified Complaint against the defendant, The Village of Valley Stream Chamber of Commerce and all cross-claims against said defendant is determined as hereinafter provided:

This personal action injury arises out of a fall from a slide by the infant plaintiff at a street fair sponsored by the defendant Chamber of Commerce held on July 29, 1999 on Rockaway Avenue between Hawthorne and Jamaica Avenues, Valley Stream.

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in **Stewart Title Insurance Company, Inc. v. Equitable Land Services, Inc.**, 207 AD2d 880, 616 NYS2d 650, 651 (Second Dept., 1994):

"It is well established that a party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944), but once a prima facie showing has been made, the

burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York*, *supra*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718)."

At the deposition of the defendant, The Looney Bin by Dennis Fritzsche, said witness testified that admission to the rides at the street fair was paid to the defendant Chamber of Commerce which thereafter issued bracelets for admission to the rides. As the operator of the event, the defendant Chamber of Commerce has a duty to keep the premises in a reasonably safe condition (see, **St. Germain v Dutchess County Agricultural Society**, 247 AD2d 146, 712 NYS2d 146 (Second Dept., 2000)). A review of the respective submissions establishes an issue of fact as to whether the ride and/or tarps at the top of th ride were in a reasonably safe condition. As such, the defendant Chamber of Commerce's application for an Order pursuant to CPLR 3212 dismissing the plaintiff's Verified Complaint against the defendant, The Village of Valley Stream Chamber of Commerce and all cross-claims against said defendant is **denied**.

SO ORDERED.

DATED:

7/19/2002

.....
Ray C. Malen
.....
J.S.C.

ENTERED

JUL 26 2002

NASSAU COUNTY
COUNTY CLERK'S OFFICE