

SHORT FORM ORDER

Supreme Court - State of New York
IAS PART 6 - SUFFOLK COUNTY

MOT. SEQ: 001 MG; 002 MG
003 MG; 004 MG

PRESENT:

Hon. RALPH T. GAZZILLO
A.J.S.C.

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LILLIE MAE MORRIS, as Administratrix of the
 chattel and credits which were of WATSON
 MORRIS III, Deceased, and LILLIE MAE
 MORRIS. Individually, :

Plaintiff(s), :

- against - :

TCLM, LLC, d/b/a TLC TRANSPORTATION
 ARTHUR BEARD, JR., COUNTY OF SUFFOLK
 TOWN OF ISLIP, LONG ISLAND POWER
 AUTHORITY and WELSBACH ELECTRIC
 CORP. OF L.I., :

Defendant(s). :

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Upon these motions for summary judgement, it is,

ORDERED that the motion (seq 001) by defendant and third-party defendant, Welsbach Electric Corp. of L.I., for summary judgment dismissing the complaint and third-party complaint asserted against it is granted; and it is further

ORDERED that the cross-motion (seq 002) by the defendant and third-party plaintiff, the Town of Islip, for summary judgment dismissing all cross-claims asserted against it and granting summary judgment on their third-party action and cross-claims asserted against Welsbach Electric Corp. L.I., is granted; and it is further

ORDERED that the cross-motion (seq 003) by defendant, LIPA, for summary judgment dismissing the complaint and all cross-claims asserted against it is granted; and it is further

ORDERED that the cross-motion (seq 004) by defendant, the County of Suffolk, for

summary judgment dismissing the complaint and all cross-claims asserted against it is granted; and it is further

ORDERED that plaintiff's action as against defendants, Welsbach Electric Corp. of L.I., the Town of Islip, LIPA and the County of Suffolk, are severed and shall continue against the remaining defendants and the caption is amended to reflect the deletion of Welsbach Electric Corp. of L.I., the Town of Islip, LIPA and the County of Suffolk as defendants; and it is further

ORDERED that counsel for original movant, Welsbach, shall serve a copy of this Order with Notice of Entry upon counsel for all other parties, pursuant to CPLR 2103(b)(1), (2) or (3), and the Calendar Clerk of this Court, within thirty (30) days of the date the order is entered and thereafter file the affidavit(s) of service with the Clerk of the Court.

Plaintiff, Lillje Mae Morris, commenced this action as Administratrix of the estate of Watson Morris, III. She has also asserted a derivative claim on her own behalf. The complaint seeks damages for the wrongful death of Watson Morris, III. It alleges that on September 1, 2007, decedent was a pedestrian on Motor Parkway, near its intersection with Yalta Dr., Central Islip, NY, when he was struck by a vehicle operated by defendant Arthur Beard, Jr. She further claims that a street light in the area was out and had not been working for approximately one week prior to the accident.

The defendants, Welsbach, the Town of Islip, LIPA and the County of Suffolk, move for summary judgment dismissing the complaint and cross-claims asserted against them. The defendant Welsbach had a contractual duty to the Town of Islip to maintain its street lights and for indemnification. Similarly, defendant LIPA had a contractual duty to the County of Suffolk.

On these motions, the various defendants assert that a municipality has no duty to the general public to provide street light unless illumination is necessary to avoid a dangerous and potentially hazardous condition (*Thompson v City of NY*, 78 NY2d 682; *Hayden v. Ward*, 283 AD2d 942; *Mastro v. Mariorino*, 174 AD2d 654). Further, defendants argue that the Highway Law of New York State does not create a duty on a Town or County to Provide artificial overhead lighting (*see* Highway Law §§ 327 and 328).

In opposition, plaintiff, and the defendant, TLMC, LLC d/b/a TLC Transportation and Arthur Beard, Jr., assert that the motions are premature as discovery has not been completed. Further, they assert that the contractual obligations between Welsbach and the Town of Islip required Welsbach to perform certain checks to insure that the lights were properly maintained.

In order to make out a prima facie case of negligence, a plaintiff must first establish the existence of a duty owed (*see, Solomon v City of New York*, 66 NY2d 1026). Here, the plaintiff's allegation that the accident site was dark is insufficient to establish the existence of a duty on the moving defendants. There is no allegation or evidence indicating that there was a defect or

hazardous condition in the roadway, and there is no showing in the record that the municipalities created a dangerous condition at the site of the accident. Further, any contractual obligations between Welsbach and the Town of Islip do not impose any greater duty to the general public.

Finally, the claim that the motions are premature is unavailing. In order to successfully contend that a motion for summary judgment is premature, the party in opposition must demonstrate how further discovery might reveal the existence of material facts which are currently within the exclusive control of the moving party, which the defendant has failed to do (see *Castrol Inc. v Parm Trading Co. of N. Y.C.*, 228 AD2d 633; *Halsey v County of Madison*, 215 AD2d 824; *Carrington v City of New York*, 201 A.D.2d 525; *Passaretti v Aurora Pump Co.*, 201 A.D.2d 475). The party opposing summary judgment must also demonstrate how further discovery is likely to reveal facts which would affect the outcome, as an opposing party's "mere conclusions, expressions of hope or unsubstantiated allegations or assertions" are insufficient to defeat a motion for summary judgment (*Welsh v County of Albany*, 235 AD2d 820, citing *Zuckerman v City of New York*, 49 NY2d 557, 562). As asserted by defendants, there has been no demonstration that further discovery is likely to reveal facts that would affect the outcome.

In light of the foregoing, the motions for summary judgment dismissing the complaint and any cross-claims asserted against them are granted. .

Dated: 3/25/10
RIVERHEAD, NY


Ralph J. Bazzillo
A.J.S.C.

FINAL DISPOSITION _____ NON-FINAL DISPOSITION _____

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