

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 8
NASSAU COUNTY

KWEESO KIM and IN SOOK KIM,

Plaintiff(s),

-against-

KEYSPAN CORP., THE COUNTY OF NASSAU,
THE VILLAGE OF LAKE SUCCESS, and
HAWKEYE CONSTRUCTION, INC.,

Defendant(s).

MOTION #008
INDEX#13957/2004
MOTION DATE:
March 12, 2008

The following papers read on this motion:

Notice of Motion.....	1
Answering Affidavits.....	2

Upon the foregoing papers, it is ordered that the motion for summary judgment by defendant Incorporated Village of Lake Success is determined as hereinafter set forth.

The plaintiffs commenced this action alleging property damage as the result of their property being flooded with water and sewage. It is alleged that the Village was negligent in not providing working sewer drains; in allowing the shoulder of University Road to remain in a dangerous condition; in failing to inspect work performed; in failing to provide warning of said dangerous condition; and in failing to maintain the sewer drains.

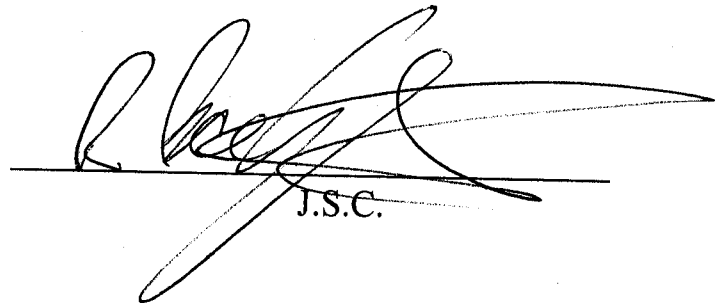
In support of the motion, the Village maintains that it never received prior written notice of the alleged defect in the roadway at University Road and University Place. The affidavit of Carol Pogrell, the Village Clerk/Administrator, has been submitted. Ms. Pogrell states that the Village did not receive prior written notice of any defective condition concerning storm drains/catch basins. In addition, Ms. Pogrell states the Village did not issue a permit for the opening of the roadway on University Road. As a result, the Village seeks summary judgment pursuant to Village Law §6-628.

In opposition to the motion, the plaintiff has submitted the affidavit of Vincent A. Ettari, PE, a licensed Professional Engineer. Mr. Ettari opines that as a result of a misdesign of the Village drainage system water was caused to flood the plaintiff's property.

In the instant matter, the Court finds that the Village did not receive prior written notice of the alleged defective condition. The prior written notice statute applies to the allegedly defective storm drain (*see, Myers v City of Port Jervis*, 288 AD2d 278, 733 NYS2d 207). Further, the Court finds that the Village is entitled to immunity from liability arising out of the claims that it negligently designed the sewage system (*see, Tappan Wire & Cable Inc. v County of Rockland*, 7 AD3d 781, 777 NYS2d 517).

As such, the motion for summary judgment by the Incorporated Village of Lake Success is granted. The complaint and any cross-claims are dismissed as to the Incorporated Village of Lake Success.

Dated: APR 30 2008



J.S.C.

ENTERED

MAY 05 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**