DOCKET NO.: NNH-CV20-6108092-S	:	**SUPERIOR COURT**
VALERIE VANCE	:	**JUDICIAL DISTRICT OF NEW HAVEN**
	:	
V.	:	**AT NEW HAVEN**
CITY OF NEW HAVEN, ET AL	:	**MAY 16, 2024**

MEMORANDUM OF DECISION

The Plaintiff, Valerie Vance (plaintiff) filed a three count complaint against the defendant, City of New Haven (City) alleging 1) negligence and carelessness pursuant to Connecticut General Statutes §7-465; 2) negligence and carelessness pursuant to Connecticut General Statutes §52-557n; and 3) breach of statutory duty to use reasonable care and keep its walkways reasonably safe for the public's use and travel pursuant to Connecticut General Statutes §13a-149.

The City denied the allegations and/or left the plaintiff to her burden of proof. The City also asserted the following special defenses: 1) The cause of action was brought beyond the statute of limitations, and 2) the plaintiff's own negligent acts and/or omissions contributed to her damages and/or injuries.

The City answered and identified the owners of the building as 1) Chase Family Limited Partnership No. 9, and 2) Chase Enterprises LLC (Collectively known as Chase). The plaintiff amended the complaint and added Chase as defendants, alleging as to each, negligence and carelessness (Counts Four and Five). Chase denied the allegations and/or left the plaintiff to her burden of proof. Chase also asserted two Special defenses, 1) the claim is beyond the statute of limitations, and 2) the plaintiff's own negligent acts and/or omissions i.e. lack of due care, contributed to her injuries and/or damages.

The court heard from six witnesses: the plaintiff, a private investigator the city engineer, the executive assistant for parks and public works, the Deputy City Clerk and the building manager. The court also admitted fourteen exhibits into evidence.

FACTS

The plaintiff is a United States Navy veteran, having served five years. She has a master's degree and is currently employed by the Department of Veterans Affairs. On September 24, 2018, she parked in the Financial Center garage, located at 175 Church Street, New Haven. She used what is known as the Pitkin Street Tunnel (Tunnel) on her way to an interview for an internship.

The Tunnel is a public roadway in the City of New Haven and provides ingress and egress to the Street. The path is regularly used by members of the public. The Tunnel has a curb area with several drainage grates which are part of the ventilation system. The grates take air away from the tunnel and the building. The City controls and is responsible for the management and maintenance of The Tunnel (testimony of the city engineer and the building manager). On September 24, 2018, the plaintiff walked along the walkway over several grates. The last one she walked on collapsed and she fell into the open hole. This drainage grate, part of the ventilation system, is 8' 8" deep. Her entire body fell into the hole but her feet could not touch the bottom. She lost her shoe and was dangling for approximately one minute while holding on to the curb. She said the grate was dirty and rusty.

The investigator described the grate as in a deteriorated condition. The concrete was soft and had several cracks. The security guard and parking garage attendant assisted in pulling the plaintiff out of the hole and fished out her shoe. Her shirt was ripped and there was debris on her pants. The incident report, prepared by the guard stated "the plaintiff was walking south in the tunnel on the sidewalk. There are numerous drainage grates, some of (which) are rusted and

deteriorated. She walked over one it fell into the ground and she (the plaintiff) was stuck in the hole. She yelled for help and the guard from the booth in the north side of the tunnel assisted her by pulling her out. She lost her shoe in the process and the building manager fished out her shoe. She had some minor scrapes and scuffs. The plaintiff refused medical attention." The report also notes that the drain gate was severely rusted (Exhibit #3).

The plaintiff pulled herself together, went to the bathroom and cleaned up, and continued to her appointment regarding the internship. She completed the necessary paperwork, only stayed for approximately half an hour and then drove home. At home she took a hot shower and applied a heating pad.

The next day, September 25, 2018, she went to the Veterans Administration Hospital. She complained of pain and stiffness of the cervical spine, consistent with upper trap strain/sprain secondary to a whiplash injury with intermittent cervicogenic headaches. The conclusion was that she would benefit from skilled Physical Therapy to decrease pain and increase strength. Plaintiff had X-rays, issued a TENS unit, a device with electrodes to control pain and referred for physical therapy (Exhibit #5).

On October 4, 2018, the plaintiff complained to Dr. Sraniero of upper torso pain. Again, on November 20, 2018, she complained of continued headaches, upper back pain and bilateral shoulder pain. She was referred for PT. On her visit of December 18, 2018, she again complained of pain in her neck, shoulder, intermittent tension headaches, trouble sleeping, and inability to work out or run. She reported taking hot showers and getting deep tissue massage.

Plaintiff reported for PT on January 3, 2019. She reported neck pain, shoulder pain, tension headaches that 'wrap up and over her head from the neck region', and trouble sleeping. The plaintiff testified she had headaches, upper back pain, a centralized dull throb, and difficulty

concentrating, and she could no longer hike or run. She described the pain as stiff and she has chronic headaches.

The plaintiff received physical therapy, a TENS unit to manage pain, stretches, trigger point therapy and manual therapy. She went to PT six times, was given a home physical therapy program and trained on how to self-administer the TENS unit. She had decreased range of motion of the cervical spine along with some strength deficits secondary to pain. The plaintiff was diagnosed with cervicalgia, upper trapezius strain/sprain and cervicogenic headaches. The plaintiff testified she still has difficulty lifting heavy objects and cannot lift anything heavier than one load of laundry. She still has difficulty sleeping on her side and has continued PT at home, once a day, once a week

The plaintiff slipped on ice and fell in her backyard on January 2021, approximately two years and four months after she fell into the defective grate. She continued doing physical therapy at home. She has not been to the gym in many months and she started yoga. The court notes that there are several benefits from yoga including improved and increased muscle strength, increased sleep and alleviating back pain.

DISCUSSION

Motion to Dismiss

At the end of the plaintiff's case Chase and the City moved for a dismissal. [1]

CHASE

Chase argued that the claim against them should be dismissed pursuant to Connecticut Practice Book 15-8, failure to establish a prima facie case. Chase argued that the plaintiff established, and the City admitted, that it was in sole possession and control of the tunnel, it was

[1] The defendant's agreed the court could defer the ruling so as to proceed in the interest of time.

a highway as defined in the statute, and it was responsible for the maintenance of the drainage grate. Furthermore, the plaintiff did not offer any evidence that chase owned, leased, possessed, managed, maintained and/or controlled the premises (Paragraph #3 Count Four) or had the duty of maintaining, repairing and exercising reasonable care over that property which it owned leased and/or maintained (paragraph #4 Count Five). Since no evidence was presented to establish the claim against Chase, the plaintiff failed to establish a prima facie case and had no objection to the motion. Therefore, the motion to Dismiss is granted.

Accordingly, counts Four and Five are dismissed.

CITY

In support of its Motion to Dismiss the City has asserted as to Count One pursuant to Connecticut General Statutes §7-465(a) and count two pursuant to Connecticut General Statutes §52-557n that the court lacks jurisdiction because the only remedy for a claim of a defective highway must be brought pursuant to Connecticut General Statutes §13a-149, The plaintiff's position is this claim is within the court's discretion and offered no counter argument.

Connecticut General Statutes § 52-557n provided that no action shall be maintained for damages resulting from an injury by means of defective road or bridge. Connecticut General Statute § 7-465(a) provides indemnification for a municipal employee from a party seeking damages. In this case the plaintiff's only remedy for damages resulting from injury by means of a defective road is Connecticut General Statute § 13a-149.

Our Supreme Court has "construed Connecticut General Statutes § 52-557a to provide that an action under the defective highway Statute § 13a-149, is a plaintiff's exclusive remedy against a municipality . . . for damages resulting from injury to any person . . . by means of a defective road . . . It also precludes a joint action seeking damages against a municipality pursuant to § 7-

465". (Internal quotation remarks omitted). *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 192, 592 A2d 912 (1991).

The Motion to Dismiss is granted as to counts One and Two. Accordingly, Counts One and Two are dismissed.

Count Three Connecticut General Statutes §13a-149

The city has moved to dismiss count Three pursuant to Connecticut Practice Book 15-8 on the grounds of failure to file a timely notice as required by Connecticut General Statutes §13a-149, which provides in pertinent part as follows: "no action for any such injury shall be maintained against any . . . City, unless written notice of such inquiry and a general description of the same, and of the cause there of and the time and place of its occurrence, shall within ninety days thereafter be given to . . . the Clerk of such city.

The City argues that the plaintiff did not prove that it either sent or that they received the notice. The plaintiff responded that it sent the notice pursuant to § 13a-149 (Exhibit #8), and the City received it (The answer to the complaint.). The plaintiff argues that the answer is an admission of receipt of notice. The City argues their records do not reflect receipt of the notice. The City in counts One and count Three answered as follows: "denied as to the Sufficiency of the notice." Additionally, the issue of whether notice was received was raised one week before trial, five years after the injury, and any clerk who could testify as to receipt of the notice has retired. As described by the Deputy Clerk a clerk receives the mail, opens it and then directs to the City Clerk who inputs the information. In this case, someone would have received it and then bring it to her.[2]

[2] There are several statutes requiring notice to a municipality including different time frames for notice. Although the language may not be identical. Our courts have interpreted the notice requirement to require proof of sending notice and the defendant receiving notice. Therefore, the best practice in every action requiring notice, regardless of the language of the statute, is to send the notice Certified, or have it served by a Marshall.

Statements made in a party's pleadings are considered judicial admissions. An admission in pleadings is equivalent to proof." *Northeast Builders Supply and Home Centers, LLC* v. *RMM Consulting, LLC*, 202 Conn. App. 315, 338, 245A and 804 (2021).

In construing the evidence in the light most favorable to the plaintiff, the court finds the plaintiff sent notice and the City received such notice.

As to the other factors in §13a-149, the City argues that it did not have notice of the defect. A municipality "is required to exercise reasonable supervision over its streets and is chargeable with notice of what supervision would disclose." (internal quotations omitted). *Nice Faio* v. *City of New Haven*, 116 Conn. App. 610, 614, 976 A.2d 75, 80(2009). The City should have known of the defective drainage grate and failed to remedy it. "To Charge a defendant with constructive notice, it is incumbent on the plaintiff to establish that the defect had been there a sufficient length of time, and was of such a dangerous character, that the defendant by the exercise of reasonable care could and should have discovered it and remedied it." (internal quotation marks omitted.) *Trendi* v. *Waterbury*, 128 Conn. 464, 468, 23 A.2d 919 (1942).

The Supreme Court has observed that the law requires of municipalities the exercise of such efforts and the employment of such measures directed to the end that their streets and walks be maintained in a reasonably safe condition. One then looks to the circumstances of the situation being considered to determine what is reasonable to be done. The duty of the municipality to use reasonable care for the reasonably prudent traveler . . . extends to pedestrian travel as well as to vehicular travel. (citations omitted; internal quotation marks omitted.) *Baker* v. *Ives*, 162 Conn. 295, 299, 294 A.2d 290 (1972).

In this case the Tunnel is a well traveled highway used by both vehicles and pedestrians for ingress and egress from the parking garage to the street and the grates are part of the ventilation

system for the city.. The testimony shows that the area is under the control of the city which it has the responsibility for its maintenance. The engineer testified that there are neither written nor oral policies concerning the maintenance of this well travelled highway. The City engineer also testified that they rely on complaints and then respond. Therefore, one would have to be injured, complain and then the city would look to see what needs to be done. There is clearly no inspection or maintenance of this roadway.

The drainage grate, part of the ventilation system was in poor condition. It was deteriorated, corroded, dirty and severely rusted. The condition of the grate led to its collapse and plaintiff fell in, doing what many others do on a daily basis, walk through the Tunnel. The plaintiff's actions in no way contributed to the condition of the grate, which was the sole proximate cause of her injuries. There were no signs of the grate's conditions so that she could avoid it.

In the particular circumstances of this case, the court finds that the City breached its duty to maintain the Tunnel, and inspect such a heavily traveled area on a schedule which would have provided actual notice of the defect and take action to remedy it.

The plaintiff has proved by a fair preponderance of the evidence that the City had notice of the claim and constructive notice of the defect. Accordingly, the motion to dismiss Count Three pursuant to Connecticut Practice Book 15-8 is denied. Judgement for the plaintiff.

CONCLUSION

The Motion to Dismiss pursuant to Connecticut Practice Book 15-8 is granted as to the defendants Chase Family Limited Partnership No. 9 (Count Four) and Chase Enterprises, LLC (Count Five) is hereby granted.

The Motion to Dismiss as to the defendant City of New Haven, pursuant to Connecticut Practice Book 15-8 is granted as to Count One, Connecticut General Statutes § 7-465 and Count

Two, Connecticut General Statutes § 52-557n. The motion to Dismiss as to Count Three, Connecticut General Statutes § 13a-149 is denied.

The plaintiff has proved, by a fair preponderance of the evidence, that the

1. The plaintiff provided notice in accordance with Connecticut General Statutes § 13a-149.
2. The Pitkin Street Tunnel is a City of New Haven Public Roadway and the drainage grate, part of the public roadway ventilation system, was defective.
3. The City controlled and was responsible for maintaining the roadway, the Tunnel and drainage grate.
4. The drainage grate was dangerous and defective as it was in a deteriorated condition.
5. The lack of either oral or written policies on regular maintenance of the highway and never conducting any inspection to keep the system in proper condition.
6. The City had constructive notice and the defective highway was the proximate cause of her injuries and there was no negligence on her part that contributed to the deteriorated condition of the grate.
7. The injuries suffered by the plaintiff have resulted in ongoing pain and suffering. Her ability to engage in activities she enjoyed prior to falling into the deteriorated grate has been impacted.

DAMAGES

Connecticut General Statutes § 13a-149 ". . . Allows a person to recover damages against a municipality for injuries caused by a defective highway. *Martin* v. *Plainville*, 240 Conn. 105, 109, 689 A.2d 1125 (1997). "[A] highway is defective within the meaning of Connecticut General Statutes §13a-149 when it is not reasonably safe for public travel, and the term public travel refers

to the normal or reasonably anticipated uses that the public makes of a highway in the ordinary course of travel. *Novicki* v. *New Haven*, 47 Conn. App. 734, 740, 709 A2d 2 (1998). If in the use of the traveled portion of the highway… a condition exists which makes travel nor reasonably same for the public, the highway is defective." (Internal quotation marks omitted) *Read* v. *Town of Plymouth* 110 Conn. App. 657, 664, 955 A2d 1255, 1259 (2008).

The Tunnel was regularly used by the public to get in and out of the garage. There is a statutory duty to maintain the tunnel which included the condition of the drainage grates, part of the ventilation system. The City failed to do so and is liable for the injuries suffered by the plaintiff.

Although the plaintiff did not have lost wages and no permanent disability rating, she is entitled to compensation for her injuries. She was prescribed a TENS unit so as to electrically administer relief for her pain. Although she continued working, she has difficulty concentrating and cannot do much else due to the chronic pain. She cannot hike, run, and lift heavy objects. She continues to do physical therapy at home.

Accordingly, the court awards damages to the plaintiff in the amount of $ 42,491.36.

Medical Bills	$7,491.36
Personal Injury	$35,000.00
Total	$42,491.36

By the Court,

Crawford, JTR