

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**762**

**CA 16-02259**

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, NEMOYER, AND CURRAN, JJ.

---

SHARON FRONGETTA, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, DEFENDANT-APPELLANT.

---

BRIAN F. CURRAN, CORPORATION COUNSEL, ROCHESTER (PATRICK BEATH OF COUNSEL), FOR DEFENDANT-APPELLANT.

PAMELA R. HALPIN, EAST ROCHESTER, FOR PLAINTIFF-RESPONDENT.

---

Appeal from an order of the Supreme Court, Monroe County (Renee Forgensi Minarik, A.J.), entered April 15, 2016. The order denied the motion of defendant to dismiss the amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries that she allegedly sustained when she tripped and fell on uneven bricks adjacent to a drainage grate in an area near Hayward Avenue and Railroad Street in the Rochester Public Market. Plaintiff's notice of claim mistakenly described the location of the accident as Hay Street rather than Hayward Avenue, but she corrected that error in her amended complaint. We conclude that Supreme Court properly denied defendant's motion to dismiss the amended complaint based on the error in the notice of claim. The court did not abuse its discretion in disregarding the mistake in the notice of claim because the mistake was not made in bad faith and defendant failed to establish that it was prejudiced by the defect (see General Municipal Law § 50-e [6]). Indeed, nothing in the record indicates that defendant instructed anyone to investigate the scene of the accident either before or after the correct location was revealed (see *Ciaravino v City of New York*, 110 AD3d 511, 511-512). We reject defendant's further contention that, after the error was corrected, plaintiff failed to identify the location of the accident with sufficient specificity (see *Brown v City of New York*, 95 NY2d 389, 393).

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court