INJURIES/DAMAGES *bone graft; decompression surgery; decreased range of motion; fusion, lumbar; hardware implanted; herniated disc at C3-4; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L4-5; nerve impingement; physical therapy; pins/rods/screws*

Robalino claimed that he suffered herniations of his C3-4, C5-6, C6-7 and L4-5 intervertebral discs. He claimed that the herniations caused impingement of spinal nerves.

Robalino underwent about eight months of physical therapy, but he claimed that he suffered ongoing pain. During the early portion of 2014, he underwent decompressive surgery that involved fusion of his spine's L4-5 level, the implantation of stabilizing hardware that included a cage and screws, and the application of a stabilizing graft of bony matter.

Robalino claimed that his injuries prevented his performance of about eight weeks of work and thereafter necessitated a switch to a part-time work schedule, from a full-time work schedule. He further claimed that he suffers residual pain, that he suffers a residual diminution of his range of motion, that his pain prevents his tolerance of prolonged periods in which he is seated, and that his pain hinders his performance of rigorous physical activities, such as lifting heavy objects. He also claimed that he previously enjoyed playing sports recreationally, but that his residual effects prevent his resumption of that activity.

Robalino sought recovery of past lost earnings, damages for past pain and suffering, and damages for future pain and suffering.

RESULT The jury rendered a mixed verdict: It found that Valdez was liable for the accident, and it found that Martinez was not liable for the accident. It determined that Robalino's damages totaled $860,000.

JOSE ROBALINO	$60,000 past lost earnings $68,000 past pain and suffering $732,000 future pain and suffering $860,000
INSURER(S)	**Government Employees Insurance Co.** for Martinez **Country-Wide Insurance Co.** for Valdez
TRIAL DETAILS	Trial Length: 2 days Trial Deliberations: 2 hours Jury Vote: 6-0
PLAINTIFF EXPERT(S)	**John Abrahams, M.D.**, neurosurgery, White Plains, NY
DEFENSE EXPERT(S)	**Maury Harris, M.D.**, orthopedic surgery, New Hyde Park, NY **Amit Khaneja**, neurology, Yonkers, NY

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Martinez's counsel did not respond to the reporter's phone calls, and Valdez's counsel declined to contribute.

–Harmony Birch

KINGS COUNTY

PREMISES LIABILITY

Negligent Assembly or Installation

Landlord claimed tenant staged accident involving closet door

VERDICT	**Defense**
CASE	Cora Allen v. City of New York and the New York City Housing Authority, No. 503751/14
COURT	Kings Supreme
JUDGE	Katherine Levine
DATE	8/8/2018
PLAINTIFF ATTORNEY(S)	**Anthony Hirschberger**, Hach & Rose, LLP, New York, NY
DEFENSE ATTORNEY(S)	**Paul A. Krez**, Krez & Flores, LLP, New York, NY

FACTS & ALLEGATIONS On Sept. 19, 2013, plaintiff Cora Allen, a 56-year-old unemployed woman, claimed that she was struck by a falling closet door. She claimed that the incident occurred at her residence, an apartment that was located at 991 Myrtle Ave., in the Bedford-Stuyvesant section of Brooklyn. Allen further claimed that she suffered injuries of her back and neck.

Allen sued the premises' owner, the city of New York, and the premises' operator, the New York City Housing Authority. Allen alleged that the defendants had been negligent in their installation and maintenance of the door. She further alleged that the defendants' negligence created a dangerous condition that caused the accident.

Allen claimed that the door, a folding door that shielded a walk-in closet, had been malfunctioning, and she also claimed that she had repeatedly reported the malfunction. Allen's expert engineer opined that the door's fall was a result of two defects: a supporting bracket having been improperly installed and another supporting bracket having been lost and not replaced.

Defense counsel claimed that the door had been properly installed, that it had been properly maintained, and that it did not fall. He suggested that Allen fabricated the incident

after having removed the door, to install a washing machine in the closet. He presented an employee of the New York City Housing Authority. The witness claimed that he inspected Allen's apartment some 18 months prior to the accident and noted that the washing machine was located in the apartment's kitchen. The washing machine was in the closet at the time of the accident, but Allen claimed that the appliance had been relocated at an earlier date. She also claimed that the premises' manager had approved relocation of the appliance.

INJURIES/DAMAGES *aggravation of pre-existing condition; bone graft; bulging disc, cervical; fusion, cervical; fusion, cervical, two-level; fusion, lumbar; hardware implanted; plate*

Allen was retrieved by an ambulance, and she was transported to Bellevue Hospital Center, in Manhattan. She underwent minor treatment.

Allen had previously undergone fusion of her spine's C3-4, L2-3, L3-4, L4-5 and L5-S1 levels. She claimed that the accident involved trauma that fractured implanted screws that were securing the C3-4 and L5-S1 levels. She also claimed that she suffered trauma that produced a bulge of her C2-3 intervertebral disc.

On Dec. 29, 2015, Allen underwent surgery that involved a second fusion of her spine's L4-5 and L5-S1 levels, replacement of previously implanted hardware, implantation of a stabilizing cage, and implantation of a graft of bony matter. On Oct. 12, 2016, she underwent surgery that involved fusion of her spine's C5-6 and C6-7 levels, implantation of a stabilizing plate and a stabilizing cage, and implantation of a graft of bony matter.

Allen claimed that she suffers residual pain and limitations. She sought recovery of damages for past and future pain and suffering.

RESULT The jury rendered a defense verdict. It found that Allen was not struck by a falling door. According to plaintiff's and defense counsel, Allen's credibility may have been harmed by her behavior during the trial.

DEMAND	$950,000
OFFER	$150,000
TRIAL DETAILS	Trial Length: 5 days Trial Deliberations: 2 hours Jury Vote: 5-1 Jury Composition: 5 male, 1 female
PLAINTIFF EXPERT(S)	**Jeffrey Ketchman**, engineering, Westport, CT
DEFENSE EXPERT(S)	None reported

POST-TRIAL Justice Katherine Levine denied plaintiff's counsel's oral motion for a new trial.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

–Harmony Birch

PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Landlords rejected ice's role in tenant's fall

VERDICT	**Defense**
CASE	Doron Guez v. Kenneth Frishberg and Sally Frishberg, No. 503452/16
COURT	Kings Supreme
JUDGE	Larry D. Martin
DATE	8/1/2018
PLAINTIFF ATTORNEY(S)	**Daniella Levi**, Daniella Levi & Associates, P.C., Fresh Meadows, NY
DEFENSE ATTORNEY(S)	**James Deegan**, Gallo Vitucci Klar LLP, Woodbury, NY

FACTS & ALLEGATIONS On Jan. 28, 2016, plaintiff Doron Guez, 52, a business's owner, fell while he was exiting his residence, an apartment building that was located at 1175 E. 13th St., in the Midwood section of Brooklyn. He fell to the bottom of a short stairway, and he claimed that he suffered injuries of an arm, his back and his neck.

Guez sued the premises' owners, Kenneth Frishberg and Sally Frishberg. Guez alleged that the defendants were negligent in their maintenance of the premises. He further alleged that the defendants' negligence created a dangerous condition that caused the accident.

Guez claimed that the accident was a result of him having slipped on ice that had accumulated on the building's porch and an attached stairway, which led to a sidewalk. He claimed that the ice was a product of water that had leaked from an awning and a gutter that were located above the landing. He further claimed that the awning and gutter frequently leaked. The defendants acknowledged having been aware of the leak and its tendency to cause icy conditions, but their counsel contended that Guez, whose tenancy spanned some 20 years, was aware of the recurrent leaks and therefore should have exercised greater caution while traversing the porch and the stairway.

Defense counsel also contended that the accident was not a product of an icy condition. According to a responding paramedic's report, Guez claimed that he slipped as a result of having tripped on the landing. The defense further

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D56386
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_____AD3d_____

Argued - May 4, 2018

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
HECTOR D. LASALLE
FRANCESCA E. CONNOLLY, JJ.

2016-07477

DECISION & ORDER

Judith Speredowich, appellant, v Long Island Rail Road Company, respondent.

(Index No. 705949/13)

Erlanger Law Firm PLLC, New York, NY (Robert K. Erlanger of counsel), for appellant.

Krez & Flores, LLP, New York, NY (William J. Blumenschein of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Robert L. Nahman, J.), entered July 13, 2016. The order granted the defendant's oral motion pursuant to CPLR 4401, made at the close of the plaintiff's case, for judgment as a matter of law dismissing the complaint.

ORDERED that on the Court's own motion, the notice of appeal is deemed to be an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action against the defendant, the Long Island Rail Road Company, alleging that she sustained personal injuries when the heel of her right shoe became caught in a crack on a train platform at Pennsylvania Station, causing her to fall. The action proceeded to a jury trial. The plaintiff testified at trial that the crack was approximately ½ inch wide, 9 to 12 inches long, and ¼ inch deep. The plaintiff also introduced photographs depicting the crack.

After the plaintiff rested, the defendant orally moved pursuant to CPLR 4401 for

judgment as a matter of law dismissing the complaint, arguing that the crack was trivial and nonactionable as a matter of law. The Supreme Court granted the defendant's motion. The plaintiff appeals, and we affirm.

"A trial court's grant of a CPLR 4401 motion for judgment as a matter of law is appropriate where the trial court finds that, upon the evidence presented, there is no rational process by which the fact trier could base a finding in favor of the nonmoving party" (*Szczerbiak v Pilat*, 90 NY2d 553, 556; *see Hamilton v Rouse*, 46 AD3d 514, 516). In considering such motion, "the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant" (*Szczerbiak v Pilat*, 90 NY2d at 556; *see Raia v Berkeley Coop. Towers Section II Corp.*, 147 AD3d 989, 991).

As a general rule, "the issue of whether a dangerous or defective condition exists depends on the facts of each case and is a question of fact for the jury" (*Palladino v City of New York*, 127 AD3d 708, 709). However, a property owner may not be held liable for trivial defects, not constituting a trap or nuisance, upon which a pedestrian might merely stumble, stub his or her toes, or trip (*see Trincere v County of Suffolk*, 90 NY2d 976, 977; *Cortes v Taravella Family Trust*, 158 AD3d 788, 789). "There is no 'minimal dimension test' or per se rule that a defect must be of a certain minimum height or depth in order to be actionable" (*Trincere v County of Suffolk*, 90 NY2d 976, 977). "In determining whether a defect is trivial, the court must examine all of the facts presented, including the 'width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury'" (*Sturm v Myrtle Catalpa, LLC*, 149 AD3d 1130, 1131, quoting *Trincere v County of Suffolk*, 90 NY2d at 978). "[A] small difference in height or other physically insignificant defect is actionable if its intrinsic characteristics or the surrounding circumstances magnify the dangers it poses, so that it unreasonably imperil[s] the safety of a pedestrian" (*Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 78 [internal quotation marks omitted]).

Here, accepting the plaintiff's evidence as true and affording her every favorable inference which may be properly drawn from the facts presented (*see Szczerbiak v Pilat*, 90 NY2d at 556), the crack that allegedly caused the plaintiff to trip and fall was trivial as a matter of law and, therefore, not actionable (*see Melia v 50 Ct. St. Assoc.*, 153 AD3d 703, 703; *Kavanagh v Archdiocese of City of N.Y.*, 152 AD3d 654, 654). Accordingly, we agree with the Supreme Court's determination granting the defendant's motion pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint.

MASTRO, J.P., DILLON, LASALLE and CONNOLLY, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court

August 22, 2018 Page 2.

SPEREDOWICH v LONG ISLAND RAIL ROAD COMPANY

Cora Allen v. City of New York and the New York City Housing Authority; 2018 Jury Verdicts LEXIS 20588

503751/14

August 08, 2018

Headline: Landlord Claimed Tenant Staged Accident Involving Closet Door

Published Date: September 03, 2018

Topic: Premises Liability - Negligent Assembly or Installation - Premises Liability - Negligent Repair and/or Maintenance - Premises Liability - Dangerous Condition - Premises Liability - Door Accidents - Premises Liability - Falling Object - Premises Liability - Apartment - Premises Liability - Tenant's Injury - Government - Municipalities

Injury: Fusion, Lumbar, Bulging Disc, Cervical, Aggravation of Pre-existing Condition, Fusion, Cervical, Fusion, Cervical, Two-level, Hardware Implanted, Bone Graft, Plate

State: ***New York***

Court: Kings Supreme

Plaintiff Counsel

Anthony Hirschberger

Firm Name: Hach & Rose, LLP

Address: ***New York***, NY

Plaintiff Name: (Cora Allen)

Defendant Counsel

Paul A. Krez

Firm Name: Krez & Flores, LLP, ***New York***, NY.

Address: ***New York***, NY

Defendant Name: (1, ***New York*** City Housing Authority)

Judge: Katherine Levine

Case Summary

On Sept. 19, 2013, plaintiff Cora Allen, a 56-year-old unemployed woman, claimed that she was struck by a falling closet door. She claimed that the incident occurred at her residence, an apartment that was located at 991 Myrtle Ave., in the Bedford-Stuyvesant section of Brooklyn. Allen further claimed that she suffered injuries of her back and neck.

Allen sued the premises' owner, the city of ***New York***, and the premises' operator, the ***New York*** City Housing Authority. Allen alleged that the defendants had been negligent in their installation and maintenance of the door. She further alleged that the defendants' negligence created a dangerous condition that caused the accident.

Allen claimed that the door, a folding door that shielded a walk-in closet, had been malfunctioning, and she also claimed that she had repeatedly reported the malfunction. Allen's expert engineer opined that the door's fall was a result of two defects: a supporting bracket having been improperly installed and another supporting bracket having been lost and not replaced.

Defense counsel claimed that the door had been properly installed, that it had been properly maintained, and that it did not fall. He suggested that Allen fabricated the incident after having removed the door, to install a washing machine in the closet. He presented an employee of the ***New York*** City Housing Authority. The witness claimed that he inspected Allen's apartment some 18 months prior to the accident and noted that the washing machine was located in the apartment's kitchen. The washing machine was in the closet at the time of the accident, but Allen claimed that the appliance had been relocated at an earlier date. She also claimed that the premises' manager had approved relocation of the appliance.

Injury Text:

Allen was retrieved by an ambulance, and she was transported to Bellevue Hospital Center, in Manhattan. She underwent minor treatment.

Allen had previously undergone fusion of her spine's C3-4, L2-3, L3-4, L4-5 and L5-S1 levels. She claimed that the accident involved trauma that fractured implanted screws that were securing the C3-4 and L5-S1 levels. She also claimed that she suffered trauma that produced a bulge of her C2-3 intervertebral disc.

On Dec. 29, 2015, Allen underwent surgery that involved a second fusion of her spine's L4-5 and L5-S1 levels, replacement of previously implanted hardware, implantation of a stabilizing cage, and implantation of a graft of bony matter. On Oct. 12, 2016, she underwent surgery that involved fusion of her spine's C5-6 and C6-7 levels, implantation of a stabilizing plate and a stabilizing cage, and implantation of a graft of bony matter.

Allen claimed that she suffers residual pain and limitations. She sought recovery of damages for past and future pain and suffering.

Trial Length

5.0 days

Jury Deliberation

2.0 hours

Jury Composition

5 male, 1 female

Jury Poll

5-1

Post Trial Status

Justice Katherine Levine denied plaintiff's counsel's oral motion for a new trial.

Plaintiff Expert(s)

Jeffrey Ketchman

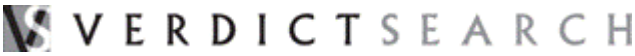
Address: Westport, CT

Specialty: Engineering

Affiliation: Anthony Hirschberger

Award: $ 0

Award Details: The jury rendered a defense verdict. It found that Allen was not struck by a falling door. According to plaintiff's and defense counsel, Allen's credibility may have been harmed by her behavior during the trial.



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PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Landlord ignored building's dirty stairwell, tenant claimed

VERDICT **$70,000**
ACTUAL **$46,900**

CASE Calvin E. Thomas v. The New York City Housing Authority, No. 311416/11
COURT Bronx Supreme
JUDGE Howard H. Sherman
DATE 6/2/2017

PLAINTIFF
ATTORNEY(S) Seth A. Harris, Burns & Harris, New York, NY

DEFENSE
ATTORNEY(S) Paul A. Krez, Krez & Flores, LLP, New York, NY

FACTS & ALLEGATIONS On Aug. 15, 2011, plaintiff Calvin Thomas, an unemployed man in his 50s, claimed that he fell while he was walking in a stairwell of his residence, an apartment building that was located at 383 E. 143rd St., in the Mott Haven section of the Bronx. He claimed that he suffered an injury of an ankle.

Thomas sued the premises' owner, the New York City Housing Authority. Thomas alleged that the agency was negligent in its maintenance of the premises. He further alleged that the agency's negligence created a dangerous condition that caused the accident.

Thomas claimed that his fall was a result of him having slipped in feces and urine, that he had previously reported uncleanly conditions in the stairwell, and that uncleanliness was a recurrent issue. He also claimed that the stairwell was not adequately lighted. He claimed that the area was dark to an extent that he could barely see his hands.

Defense counsel contended that Thomas should have exercised greater caution, given Thomas' claim that the stairwell's uncleanliness was a recurrent condition.

Defense counsel also suggested that Thomas fabricated the incident, and he challenged Thomas' credibility. During cross-examination, Thomas initially denied having been convicted of trafficking more than 100 kilograms of marijuana. Thomas recanted his denial after having been presented documentary proof of the conviction. Defense counsel claimed that Thomas also repeatedly provided contradictory accounts of the manner in which the accident occurred.

INJURIES/DAMAGES *ankle ligament, tear; fracture, ankle; fracture, bimalleolar; internal fixation; open reduction; pins/rods/screws; plate*

Thomas suffered a bimalleolar equivalent fracture: a fracture of one of an ankle's malleoli, which are the bony protuberances, and damage of the ankle's medial ligaments. The injury involved Thomas' left ankle.

Thomas' injury was addressed via open reduction and the internal fixation of a plate and five screws. He subsequently underwent removal of his fixation hardware.

Thomas claimed that he suffers residual pain and limitations, that his residual effects necessitate his use of a cane, and that he will have to undergo fusion of his left ankle.

Thomas sought recovery of damages for past and future pain and suffering.

The defense's expert orthopedist opined that Thomas' left ankle appears to have fully healed. The expert also contended that, if the ankle's condition worsens, replacement of the ankle would be preferable to fusion.

RESULT The jury found that the parties shared liability for the accident. The New York City Housing Authority was assigned 67 percent of the liability, and Thomas was assigned 33 percent of the liability. The jury determined that Thomas' damages totaled $70,000—all for past pain and suffering—but the comparative-negligence reduction produced a net recovery of $46,900.

DEMAND $2,600,000
OFFER $300,000

TRIAL DETAILS Trial Length: 5 days
Trial Deliberations: 4 hours
Jury Vote: 5-1 (liability); 6-0 (damages)
Jury Composition: 2 male, 4 female

PLAINTIFF
EXPERT(S) **Jerry A. Lubliner, M.D.**, orthopedic surgery, New York, NY

DEFENSE
EXPERT(S) **Edward S. Crane, M.D.**, orthopedic surgery, New York, NY

POST-TRIAL Plaintiff's counsel has moved for an increase of the damages award.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

–Alan Burdziak

PREMISES LIABILITY

Man Fabricated Claim of Fall on Stairs, Injury

Verdict: Defense

***Rayshawn Cohen v. N.Y.C.H.A.*, No. 306143/10**

Court/Judge: Bronx Supreme/Lizbeth Gonzalez

Plaintiff's Attorney: Christopher J. Donadio, Burns & Harris

Defense attorney: Paul A. Krez, Krez & Flores, LLP

Facts & allegations: In February 2010, Rayshawn Cohen, 30, claimed that he injured his knee after falling down a stairway at his apartment building at 409 E. 146th St., in the Mott Haven section of the Bronx.

Cohen sued the premises owner, the New York City Housing Authority, alleging negligent maintenance created a dangerous condition that caused his accident.

He claimed that he fell on a temporary wooden step that had been installed to replace the stairway's bottom step. He claimed that the step was not secured, and that it wobbled and flipped when he stepped on it.

Defense counsel contended that the temporary step was safe and suggested that Cohen fabricated the incident. He noted that Cohen's counsel did not present testimony by Cohen's wife, who was said to have arrived moments after the incident and saw him lying next to the allegedly displaced step.

Injuries/damages: On February 13, 2010, one day after the accident was said to have occurred, Cohen underwent minor treatment at a hospital, his right knee was severely painful and testified that he was crying and unable to walk.

Cohen claimed that he sustained a bucket-handle tear of his right knee's medial meniscus and a partial tear of the same knee's anterior cruciate ligament. He underwent arthroscopic surgery that involved repair of his right knee's damaged meniscus. He did not undergo therapy.

Cohen claimed that he limps and suffers residual pain. He sought recovery of $450,000 for past pain and suffering, and he sought recovery of $270,000 for future pain and suffering.

The defense's expert orthopedist said Cohen's injuries were long-standing conditions that predated the accident and that Cohen does not limp.

Defense counsel also challenged Cohen's claim regarding the severity of his pain during the days after the accident. He presented a doctor who claimed that Cohen became involved in an altercation with an intoxicated patient, and that Cohen jumped off of a gurney, slugged the patient, then danced about as though he had won a prizefight.

Result: The jury rendered a defense verdict. It found that the step was not reasonably safe and that the New York City Housing Authority was negligent in its maintenance of the step, but that Cohen's injuries were not caused by the step's condition or the defendant's negligence.

Case Name: B.G., a minor by her father and natural guardian Marcus Green and Marcus Green individually v. The New York City Housing Authority

Docket/File Number: 0015871/2011

Trial Type: Jury
Verdict: Defendant, $0

Range Amount: $0

Verdict/Judgment Date: March 04, 2014

Judge: Frederick D.R. Sampson
Attorneys:
Plaintiffs: Donte Mills, Mills & Edwards, New York, NY
Defendant: Paul A. **Krez**, **Krez** & **Flores**, New York, NY

Breakdown of Award:
$0

Summary of Facts:
B.G., a minor, reportedly was a pedestrian on the sidewalk in front of the Woodside Houses on 51st Street, owned by the New York City Housing Authority, July 24, 2010 when she was caused to fall by the cracked, raised, broken, uneven and hazardous conditions that existed on the sidewalk.

B.G. said she sustained injuries.

B.G., by her father Marcus Green, and Green individually filed a lawsuit against the Housing Authority in the New York Supreme Court for Queens County, asserting negligence in the ownership, operation, management, maintenance and control of the sidewalk, and alleging that the Housing Authority had actual written notice of the defective condition for at least 15 days prior to the incident.

B.G. sought compensation for pain and suffering and medical expenses. Green sought compensation for loss of services, society and companionship.

The case proceeded to trial and a jury found for the defendant March 4, 2014.

Bonita Chellel v. NYCTA & MTA

No. 41593/03

DATE OF VERDICT/SETTLEMENT: December 04, 2007

TOPIC: PREMISES LIABILITY - NEGLIGENT REPAIR AND/OR MAINTENANCE - DANGEROUS CONDITION OF PUBLIC PROPERTY - PREMISES LIABILITY - SLIP AND FALL - GOVERNMENT - MUNICIPALITIES

Subway Station's Recurrent Leak Caused Fall, Patron Alleged

SUMMARY:

RESULT: Verdict-Defendant

The jury rendered a defense verdict.

EXPERT WITNESSES:

Plaintiff: Stanley H. Fein, P.E.; Engineering; Syosset, NY

Defendant: Mark Marpet, P.E.; Engineering; Chester, NJ

ATTORNEYS:

Plaintiff: Marie Ng; Sullivan, Papain, Block, McGrath & Cannavo, P.C.; New York, NY (Bonita Chellel)

Defendant: Edward A. Flores; **Krez** & Peisner; New York, NY (MTA, NYCTA)

JUDGE: Arthur M. Schack

RANGE AMOUNT: 0

STATE: New York

COUNTY: Kings

INJURIES: The trial was bifurcated, so damages were not before the court.

Facts:

On March 7, 2003, plaintiff Bonita Chellel, 57, a nurse, slipped while exiting a subway train that was stopped at the station that is located on Nevins Street, in Brooklyn. She claimed that she fell and sustained an injury of one knee.

Chellel sued the station's operators, the Metropolitan Transportation Authority and the New York City Transit Authority. She alleged that the defendants were negligent in their maintenance of the premises and that their negligence created a dangerous condition.

Chellel claimed that she slipped while stepping onto the tiled floor of the station's platform. She contended that water had leaked from the station's ceiling and accumulated in the area of her fall. She claimed that the leak occurred during inclement weather, that the defect was created about two years before the incident occurred and that the defendants were aware of its presence. A nonparty witness claimed that he observed the leak while Chellel was receiving medical attention.

Defense counsel reported that, during a deposition, Chellel testified that she fell near the rear end of the train. During the trial, Chellel was given a photograph of the platform and asked to indicate the location of her fall. She marked an "X" at a point about 12 feet north of a staircase near the center of the platform. However, the train's conductor claimed that

Chellel fell near the last car of the train, which would have been about 200 feet from the center of the platform.

The station's supervisor acknowledged that the leak occurred during heavy rainfall or snowfall, but he contended that the leak directed water to an area that was between two staircases that sandwiched the center of the platform--not the north end of the platform, which was the area in which the defense claimed that Chellel fell. The supervisor also contended that he inspected the area less than one hour after the incident and that the platform was "damp," but that it was clean and not hazardous or slippery. Defense counsel claimed that the moisture was created by water that had been tracked into the area. Although meteorological reports showed that there had not been any precipitation during the day of the incident, the New York area was covered by about 2 inches of snow.

Chellel claimed that she sustained a fracture of one patella. She sought recovery of damages for her past and future pain and suffering.

Marcianne Pean v. NYCTA

No. 13169/05
DATE OF VERDICT/SETTLEMENT: July 17, 2008
TOPIC: PREMISES LIABILITY - NEGLIGENT REPAIR AND/OR MAINTENANCE - PREMISES LIABILITY - DANGEROUS CONDITION OF PUBLIC PROPERTY - PREMISES LIABILITY - SLIP AND FALL - PREMISES LIABILITY - STAIRS OR STAIRWAY - GOVERNMENT - MUNICIPALITIES
Woman Claimed She Slipped on Subway Station's Slushy Stairs

SUMMARY:
RESULT: Verdict-Defendant
The jury rendered a defense verdict. It found that the New York City Transit Authority was not negligent or a substantial cause of Pean's fall.

EXPERT WITNESSES:
ATTORNEYS:
Plaintiff: Nina J. Neumunz; Rubenstein & Rynecki; Brooklyn, NY (Marcianne Pean)
Defendant: Alexandra **Vandoros**; Wallace D. Gossett; Brooklyn, NY (NYCTA)

JUDGE: Gerald S. Held

RANGE AMOUNT: 0

STATE: New York
COUNTY: Kings

INJURIES: Pean was placed in an ambulance and transported to Long Island College Hospital, in Brooklyn. She reported that she was suffering pain that stemmed from her back and her right knee. She underwent minor treatment.

Facts:
At about 4 p.m. on Feb. 25, 2005, plaintiff Marcianne Pean, 34, an in-home health-care aide, slipped while descending a stairway that led to a subway station that was located on Nevins Street, in Brooklyn. She claimed that she fell and sustained injuries of her back and a knee.

Pean sued the subway station's operator, the New York City Transit Authority. She alleged that the New York City Transit Authority was negligent in its maintenance of the premises and that its negligence created a dangerous condition.

Pean claimed that she slipped on slush that occupied one of the steps. A witness agreed that slush was present on the stairs. Pean's counsel contended that snow fell until about 5 a.m. on the morning of the incident, and he claimed that 5 to 6 inches of snow were on the ground when Pean fell.

Pean's counsel also claimed that a single maintenance person had been in charge of clearing the station's stairways, and she argued that a single person could not have capably handled the maintenance of the very busy station.

Defense counsel contended that the station was in a reasonably safe condition and, thus, that the defendant fulfilled its duty to Pean. The station's maintenance person claimed that he cleared the subject stairway some 30 minutes prior to Pean's fall, and he also claimed that the stairway was cleaned one or two prior times during his shift. He contended that patrons routinely tracked snow and slush onto the stairway.

Defense counsel also contended that Pean did not establish that slush occupied the stairs or that the defendant was negligent in its maintenance of the stairs. She noted that Pean's witness did not observe the condition of the specific step that caused Pean's fall.

A doctor ultimately determined that Pean was suffering bulges of her L4-5 and L5-S1 intervertebral discs, a tear of her right knee's lateral meniscus, and a tear of her right knee's medial meniscus. Pean claimed that the injuries were products of the accident. In August 2005, she underwent a partial meniscectomy of her right knee's lateral meniscus. Her spinal injuries were addressed via physical therapy.

Pean contended that she suffers residual pain and a residual reduction of her range of motion. She contended that the residual injuries prevent her performance of her work and many of her typical daily activities.

Pean sought reimbursement of a medical-expenses lien, recovery of her past and future lost earnings, and damages for her past and future pain and suffering.

Case Name: Ahm S. Rahman v. The City of New York and The New York City Transit Authority

Docket/File Number: 016374/2010

Verdict: Defendants, $0

Verdict Range: $0

Verdict Date: Dec. 11, 2012

Judge: Phyllis Orlikoff Flug
Attorneys:
Plaintiff: Philip P. Vogt, Law Office of Philip P. Vogt, New York, N.Y.
Defendants: **Edward Flores**, Krez & **Flores**, New York, N.Y.; Wallace D. Gossett, Assistant General Counsel, N.Y.C. Transit Authority, Brooklyn, N.Y.

Trial Type: Jury
Breakdown of Award:
$0

Summary of Facts:
Ahm S. Rahman said he was walking out of the Queensboro Plaza Station in Queens, N.Y., March 2, 2010. Rahman claimed the Queensboro Plaza Station was owned, operated, managed, maintained and/or controlled by the New York City Transit Authority and/or The City of New York.

Rahman claimed as he walked out of the Queensboro Plaza Station on a connecting exterior stairway located on the south side of the station, he slipped and fell due to the presence of snow and ice on the steps.

Rahman apparently sustained unspecified personal injuries from the fall.

Rahman brought a lawsuit against The City of New York and the New York City Transit Authority in the New York Supreme Court for Queens County. In his complaint, the defendant alleged that the defendants were obligated to keep, maintain and repair the subway station and stairway so that it would not constitute a danger and hazard to persons lawfully thereon.

Rahman contended the defendants were careless and reckless in allowing the stairs to become slippery and unsafe, allowing snow and/or ice to remain on the steps, failing to maintain the stairway in a reasonably safe condition, allowing a portion of the canopy or roof to be missing which permitted snow, sleet, ice and snow to accumulate under the missing section of the roof, failing to apply salt and/or sand to improve traction, failing to inspect the stairway, and failing to warn him of the dangerous condition.

The plaintiff claimed the occurrence was caused wholly and solely by reason of the negligence of the defendants, and requested damages for his pain and suffering, lost wages and medical expenses.

The defendants denied liability.

The case proceeded to a jury trial before Justice Phyllis Orlikoff Flug. The jury returned its verdict Dec. 11, 2012, and found in favor of the defendants.
Court: Supreme Court, Eleventh Judicial District, Queens County, New York.

RYAN vs. HOUSING.

134429/94

DATE OF VERDICT/SETTLEMENT: No Date Given

TOPIC: ALLEGED DANGEROUS BROKEN TILE ON FLOOR IN HOUSING AUTHORITY APARTMENT - FALL DOWN - FRACTURED ANKLE.

SUMMARY:

Result: DEFENDANT'S VERDICT

ATTORNEY:

Defendant's: Edward A. Flores of **Krez** & Peisner in Manhattan.

JUDGE: Michael D. Stallman

RANGE AMOUNT: $0

STATE: New York
COUNTY: New York

INJURIES:

Alleged dangerous broken tile on floor in Housing Authority apartment - Fall down - Fractured ankle.

FACTS:

The 42-year-old female plaintiff tenant contended that she tripped and fell over a broken tile in her apartment as she was chasing her three-year-old son. The plaintiff contended that defendant Housing Authority negligently failed to repair the tiles despite prior complaints.

The defendant denied receiving such notice. The defendant further denied that the incident occurred in the apartment. The defendant contended that a neighbor had indicated that the accident occurred in the playground. The defendant also maintained that a physician's records taken after she visited the hospital reflected a history from the plaintiff that it occurred when she was visiting Virginia a few days earlier.

The plaintiff denied making such a statement and the physician taking this a history indicated that he could have received this information from an intern and could have been mistaken. The plaintiff also denied that she had ever been in Virginia. The plaintiff also maintained that the record also reflected that she had sustained some injury three days earlier, and also reflected that she aggravated this injury in a fall on the night in question.

The plaintiff contended that she sustained a bimalleolar fracture which was treated by of closed reduction and long leg casting. The plaintiff maintained that she suffered a mal-union and will she will permanently experience pain and a limp. The jury was aware that the plaintiff was a recovering heroin addict taking methadone and is HIV positive.

The jury found for the defendant.

Jury Verdicts Review Publications, Inc.

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DATE OF VERDICT/SETTLEMENT: October 13, 2010

TOPIC: PREMISES LIABILITY - SLIP AND FALL - PREMISES LIABILITY - SNOW AND ICE - PREMISES LIABILITY - NEGLIGENT REPAIR AND/OR MAINTENANCE

Plaintiff Claimed Landlord Didn't Clear Icy Walkway

SUMMARY:

RESULT: Verdict-Defendant

Award Total: $0

The jury rendered a defense verdict.

EXPERT WITNESSES:

Plaintiff: Alan J. Dayan, M.D.; Orthopedic Surgery; Brooklyn, NY Arnold Wilson, M.D.; Orthopedic Surgery; Bronx, NY Sanjiv Bansal, M.D.; Orthopedic Surgery; Bronx, NY

Defendant: Herbert S. Sherry, M.D.; Orthopedic Surgery; New York, NY Irving Etkind, M.D.; Orthopedic Surgery; Scarsdale, NY

ATTORNEYS:

Plaintiff: Jeffrey J. Belovin; Belovin & Franzblau; Bronx, NY (Betty Freeman)

Defendant: **Edward** A. **Flores**; Krez & Peisner; New York, NY (NYCHA)

JUDGE: Edgar Walker

RANGE AMOUNT: 0

STATE: New York

COUNTY: Bronx

INJURIES: Freeman sustained a tear of the medial and lateral meniscus of the left knee requiring arthroscopic surgery for partial meniscectomy. Years later her left knee worsened and Freeman elected to have total knee replacement surgery. She underwent several total knee replacement surgeries of the left knee due to postoperative infections, removal of the prosthesis and replacement of the new prosthesis. Freeman was confined to an electric wheelchair by the time of trial.

Facts:

On Feb. 5, 2004, plaintiff Betty Freeman, 54, who was a retired record company clerk and disabled, claimed that as she was walking in an exterior walkway within a New York City Housing Authority housing development she slipped and fell due to an accumulation of snow and ice.

Freeman sued the New York City Housing Authority, alleging negligence.

Plaintiff's counsel argued that the snow and ice were improperly or inadequately removed and that no sand or salt was put down. Plaintiff's counsel contended that there were no warnings about the condition.

Defense counsel denied Freeman's claim of snow and ice covering the walkway area. Defense counsel argued that salt and sand were spread the day before the accident.

Defense counsel called a New York City Housing Authority employee who claimed to have plowed the walkway area and spread sand and salt the day before the accident. Defense counsel also called a former New York City Housing Authority employee who witnessed the fall and assisted Freeman at the time of the accident. The former employee testified that the walkway at the exact location where Freeman slipped and fell was free of snow and ice and covered with sand and salt.

Freeman also claimed to have sustained a tear of her rotator cuff in her right shoulder and she underwent arthroscopic surgery for acromioclavicular impingement syndrome and debridement of the fraying rotator cuff tendons. She claimed tears of the menisci of the right knee but did not have a surgeries performed on the right knee from the date of the accident to date of trial.

Freeman was seeking damages for pain and suffering with no wage-loss claim.

Defense counsel argued that Freeman's claim of a right shoulder injury was not related to the fall but was a preexisting impingement syndrome due to a large spur at the tip of the acromion, which was present years before the accident and caused the impingement syndrome. A defense orthopedic surgeon testified that Freeman's pre-accident osteoarthritis caused her total knee replacement.

XIX/35-14 ELEVATOR ACCIDENT ABRUPT STOP HISTORY OF PROBLEMS IN SERVICE DEFENSE VERDICT ON LIABILITY

Cora Allen v. New York City Housing Authority 45899/95 7-day trial Verdict 2/4/02 Kings Supreme

Judge: Muriel Shaff Hubsher

Verdict: Defense verdict on liability (5/1). Post-trial motions were denied. Jury: 2 male, 4 female.

Pltf. Atty: Harold Gordon of Kahn, Gordon, Timko & Rodriques, P.C., Manhattan

Deft. Atty: Paul A. **Krez**

Facts: This accident occurred on 6/29/95 at approximately noon, in elevator A of 303 Vernon Ave., Brooklyn. Pltf., a 48-year- old unemployed woman, claimed that while she was riding on the elevator from the 12th floor, it came to an abrupt stop on the 6th floor, stalled for a few minutes, and then continued on to the lobby. Pltf. testified that the elevator jerked so violently that it threw her against the elevator wall and then to her knees.

Deft. contended that the accident did not occur as the Pltf. testified, despite the fact that the elevator maintenance report showed 86 outages due to problems in the 6 months prior to the accident. Deft. contended that Pltf. s testimony that she was moving a 200- to 300-lb floor model television on a hand truck, and that the television came off of the hand truck and upended itself when the elevator stopped, despite the fact that the elevator was only going 5 mph, was incredible.

Injuries: (not before the jury) bulging cervical disc at C6-7; herniated lumbar disc at L5-S1 with nerve root impingement; central lumbar disc herniations at L3-4 and L4-5; laminectomy; severe bone compression requiring a trans-abdominal resection of vertebrae at L5- S1; osteomyelitis of the spine; bone grafting; multiple hospitalizations with IV antibiotics and permanent need to use a cane to ambulate. Demonstrative evidence: enlargements of elevator outage reports; photographs of the elevator. Offer: $75,000; demand: $950, 000. Jury deliberation: 4 hours.

FALLDOWN SUBWAY STATION OIL SPILL BY SUBWAY TURNSTILE QUESTION OF WARNING DEFENSE VERDICT

Nelson Peña v. New York City Transit Authority 4-day trial New York Supreme

Judge: Marylin G. Diamond

Verdict: Defense verdict (6/0). Post-trial motions were denied. Jury: 1 male, 5 female. (2011)

Pltf. Atty: Michael D. Ballen of Zucker & Ballen, Brooklyn

Deft. Atty: Paul A. **Krez**

Facts: This accident occurred at the Houston St. IRT subway station in Manhattan. Pltf., a 33-year-old account representative for UPS, claimed that Deft. failed to clean up an oil spill located in front of a turnstile, and failed to warn him of its presence, causing him to slip and fall.

Deft. contended that the spill had occurred only 5 minutes before Pltf. s fall and that it did not have sufficient time to clean it up. Deft. further contended that it had warned Pltf. of the spill, but that Pltf. was late for an appointment and was running to catch a train when he slipped and fell.

Injuries: (not before the jury) tear of the left medial meniscus; unspecified injuries to the head, back, and neck. Demonstrative evidence: accident reports; ambulance call report; hospital record; MRI films and reports; timeline chart. Offer: $20, 000; demand: $90,000. Jury deliberation: 15 minutes.

PREMISES LIABILITY
Dangerous Condition of Public Property
Subway patron claimed patched stairs were hazardous
Verdict Defense (2007)
Case Adeline D'Ambra v. New York City Transit Authority
Court New York Supreme
Judge Marilyn Shafer

Plaintiff
Attorney(s) John Lonuzzi, Lonuzzi & Woodland LLP, Brooklyn, NY
Defense
Attorney(s) Paul A. **Krez**
Wallace D. Gossett, Brooklyn, NY
Facts & Allegations Plaintiff Adeline D'Ambra, 77, tripped on a staircase landing at a New York City Transit Authority subway station located at Fulton Street and Broadway in New York. She fell down approximately 12 steps and sustained a fracture of her left wrist.
D'Ambra sued the transit authority. She claimed that she tripped because her heel became caught on a 0.25-inch raised area in which a crack had been filled or patched with epoxy or concrete. She contended that the patch constituted a defective and dangerous condition.
The transit authority contended that D'Ambra slipped on water that had accumulated on the landing as a result of rainfall. It presented three witnesses--an emergency-medical-services technician, a nurse and a physician's assistant--all of whom testified that D'Ambra told them that she had slipped on wet stairs. D'Ambra conceded that it had rained prior to the incident, but she contended that any residual water had dried.
Injuries/Damages arthritis; carpal-tunnel syndrome; fracture, L1; fracture, ulna; fracture, wrist; hematoma
D'Ambra sustained a displaced, comminuted fracture of her left wrist's radius and ulna, a fracture at L1, and a hematoma on her head. She underwent two wrist surgeries, which included a bone graft and the application of internal and external fixation devices. She also claimed that she suffered from traumatic carpal-tunnel syndrome and traumatic arthritis. She contended that the carpal-tunnel syndrome required corrective surgery, and that her L1 fracture would eventually necessitate fusion surgery. She added that her back injury causes her to walk with a limp.
The transit authority did not contest any of D'Ambra's injuries, save for the limp, which it contended was a pre-existing ailment.
Result The jury found that the transit authority was negligent, but that its negligence was not the proximate cause of D'Ambra's fall.
Demand $450,000
Offer $30,000
Trial Details Trial Length: 4 days
Jury Deliberations: 4 hours

XXI/3-15
PREMISES LIABILITY
Dangerous Condition Trip and Fall Stairs or Stairway
Woman said chipped subway step caused her to fall
Verdict Defense
Case Alicia Boyd and Devon Pandy v. New York City Transit Authority, No. 10556/02
Court New York Supreme
Judge Robert D. Lippmann

Plaintiff
Attorney(s) Harry First, First & First, New York, NY
Defense
Attorney(s) Paul A. **Krez**, New York, NY
Facts & Allegations Plaintiff Alicia Boyd, 24, a modeling-agency talent scout, claimed that she tripped and fell while descending the exterior staircase leading to a New York City Transit Authority subway station on 28th Street and Park Avenue South in New York. Her boyfriend, plaintiff Devon Pandy, contended that Boyd grabbed him as she was falling and caused him to fall. The incident occurred on Nov. 22, 2001, at the station's uptown entrance.
Boyd and Pandy sued the New York City Transit Authority. The proceedings were bifurcated; this trial addressed liability.
Boyd claimed that she tripped on chipped, cracked stair-tread nosing.
The transit authority contended that Boyd slipped on the sidewalk outside the entrance to the stairway, and that she fell forward onto the steps.
Injuries/Damages comminuted fracture; fracture, pubic ramus
Boyd sustained comminuted fractures of her symphysis pubis and her left superior pubic ramus. She also sustained a comminuted, non-displaced fracture of her left sacral ala. The fracture line extended to the sacral foramen.
Result Pandy's claim was discontinued with prejudice prior to the trial. The jury rendered a defense verdict on liability.
Demand $125,000
Offer $15,000
Trial Details Trial Length: 2 days
Jury Deliberations: 15 minutes

XVIII/11-43 FALLDOWN STAIRS ACTION DISCONTINUED AFTER INFANT PLAINTIFF ADMITTED THAT SHE HAD LIED UNDER OATH

Arlene Adorno by her m/n/g Luz Adorno v. NYCHA 2-day trial New York Supreme

Judge: Dominick J. Viscardi

Decision: Pltfs. agreed to discontinue this action with prejudice in open court on the condition that Deft. would not seek costs and sanctions.

Pltf. Atty: Mitchell Proner and Marion S. Mishkin of Proner & Proner, Manhattan
Deft. Atty: Paul A. **Krez**

Facts: The accident occurred on 8/7/96 at 8:30 PM in a building at 920 East Sixth St., where a relative of the 13-year-old Pltf. lived. Pltf. testified that she was descending an interior stairway when she tripped over a defect and fell. Pltf. claimed that 6 inches of nosing on one tread was cracked and part of it was missing. She contended that two friends witnessed the accident, a Ms. Gonzalez, and a boy identified only as Wiggles (he was never further identified). Deft. contended that Ms. Gonzalez did not witness the accident, as she was in Puerto Rico at the time. Pltf. conceded at trial that Ms. Gonzalez was not present at the time of the alleged accident. She also admitted that she had lied under oath at her 50-h hearing and EBT because she did not want her mother to know that she had been alone with Wiggles, who was much older than Pltf. On cross-examination, Pltf. admitted that she had lied under oath at least eight times during pre-trial testimony. Pltf. s counsel requested permission to discontinue the case, with prejudice, on the condition that Deft. not seek costs or sanctions. The court granted permission and Deft. accepted the agreement.

Injuries: (not before the court) fracture of the right knee with chondromalacia. Specials: $15,000 for surgery and other medical expenses. Offer: $25,000 (withdrawn); demand: $220,000.

XVII/23-7 APARTMENT ACCIDENT CLOSET DOOR FALLS ON INFANT DEFENSE VERDICT ON LIABILITY

Rosalind Smith, as m/n/g of Lamanie Fain v. New York City Housing Authority 109908/96 4-day trial New York Supreme

Judge: Samuel J. Castellino

Verdict: Defense verdict on liability (5/1). Jury: 4 male, 2 female.

Pltf. Atty: Al Aquila of Sullivan, Papain, Block, McGrath & Cannavo, Mineola
Deft. Atty: Paul A. **Krez**

Facts: Pltf., then 4 years old, claimed that she was injured on 7/11/95 as she opened a folding and sliding closet door that fell off its track, striking her and pinning her to the floor. Pltf. mother claimed that she had advised Deft. of the door s defective condition on three prior occasions, but that it was never repaired. She produced three work tickets, which, she claimed, were given to her after she made each complaint. Deft. claimed that Pltf. mother never filed any complaints and that the work tickets were fraudulent. Deft. presented evidence that Pltf. mother had submitted prior fraudulent claims against the New York City Housing Authority and had been convicted of forging an endorsement on a check and attempting to cash it.

Injuries: (not before the jury) fractured radius and ulna of the left arm. Demonstrative evidence: alleged work tickets; police reports; photographs of the door; certificate of conviction for larceny. No offer; demand: $125,000. Jury deliberation: 25 minutes.

XIV/5-4 FALLDOWN SUBWAY STATION STAIRS DEFENSE VERDICT

Diana and Richard Upshur v. NYCTA 12366/92 2-day trial Judge Charles T. Major, New York Supreme

VERDICT: Defense verdict (5/1). Post-trial motions were denied. Jury: 3 male, 3 female.

Pltf. Atty: Michael Andrews of Esterman & Esterman, Manhattan
Deft. Atty: Paul A. **Krez**

Facts: At 8:30 AM on 12/22/91, Pltf., a 33-year-old home health care attendant, allegedly tripped and fell on water on the staircase leading to an underpass at the 96th St. IRT station. Pltf. claimed that earlier that morning, an NYCTA "mobile wash team" had washed the station and that water had accumulated on the stairs. The responding Transit Authority police officer found that the area was wet after the accident. Pltf. contended that Deft. should have dried the area or placed appropriate warning signs. There were no witnesses to the accident.

On cross-examination, Pltf. conceded that she did not hold the handrails as she descended the stairs. Deft. argued that the accident, if it actually occurred, was caused by Pltf.'s carelessness in not watching where she walked and for failing to use the handrails.

Injuries: (not before the jury) herniated discs at L1-2 and L2-3; right ankle sprain with chronic pain and swelling. Demonstrative evidence: photographs of the staircase; weather report; accident report. No offer; demand: $200,000. There was no expert testimony.

XXII/37-09
PREMISES LIABILITY
Dangerous Condition Negligent Repair and/or Maintenance Slip and Fall
Wet staircase blamed for elderly apartment tenant's fall
Verdict Defense
Case Carmen Guridy v. New York City Housing Authority, No. 105327/02
Court New York Supreme
Judge Robert D. Lippmann

Plaintiff
Attorney(s) Steven G. Winn, Monsour, Winn, Kurland & Warner L.L.P., Lake Success, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On June 3, 2001, plaintiff Carmen Guridy, 76, slipped while descending the interior stairs of her apartment building, which was located at 1806 First Ave. in New York. She fell and sustained a closed head injury.
Guridy sued the building's owner, the New York City Housing Authority. She alleged that the staircase constituted a dangerous condition and that the building's tenants were not warned of the danger.
Guridy claimed that housing authority personnel had mopped the steps and that she slipped because the steps were still wet. She contended that the housing authority should have posted signs that warned that the steps were wet.
The housing authority contended that the stairs were not dangerous. It contended that Guridy fell because she became dizzy and lost her balance. It noted that Guridy was treated by emergency-medical-services personnel and at an emergency-room. It produced her emergency-medical-services records, which included a notation that she fell after she "felt dizzy," and her emergency-room records, which included a notation that she fell after she "became dizzy and lost consciousness."
The housing authority also presented the building's custodian and superintendent. They testified that the staircase was clean and dry during an inspection they performed immediately after Guridy's fall.
Injuries/Damages blunt force trauma to the head; closed head injury; memory loss; physical therapy; subdural hematoma
Guridy's head struck the staircase landing. She sustained a blunt trauma that inflicted a closed head injury. She was placed in an ambulance and taken to the emergency room of Metropolitan Hospital Center in New York. Two days later, on June 5, she underwent a CT scan, which revealed the presence of a large subdural hematoma with displacement of the brain's midline structures and a transuncal brain herniation. She underwent an emergency craniotomy and evacuation of the hematoma.
Guridy was hospitalized until July 5, 2001, when she was transferred to an assisted-living residence. She underwent several months of physical therapy. In 2004, she was discharged from the assisted-living residence.
Guridy's expert neurologist testified that Guridy's injuries were causally related to her fall. He contended that she requires the assistance of an ambulatory walker and that she experiences residual memory deficits.
The housing authority's expert neurologist opined that Guridy fell because she experienced a syncopal episode that caused dizziness and loss of balance. He also opined that Guridy had a preexisting brain-matter disease that stemmed from minor strokes that she had sustained.
Result The jury rendered a defense verdict. It found that the housing authority was not negligent.
Trial Details Trial Length: 7 days
Jury Deliberations: 35 minutes

XVII/22-2 FALLDOWN TENANT FALLS ON BROKEN TILE IN APARTMENT DEFENSE VERDICT

Karol Ryan v. NYCHA 134429/94 6-day trial New York Supreme

Judge: Michael D. Stallman

Verdict: Defense verdict (6/0). Post-trial motions were denied. Jury: 1 male, 5 female.

Pltf. Atty: Robert M. Ginsberg of Ginsberg & Broome, Manhattan
Deft. Atty: Edward A. **Flores**, Manhattan

Facts: Pltf., age 42 and unemployed, claimed that on 6/9/94 at approximately 4 PM, she tripped and fell on a broken floor tile in the living room of her apartment as she ran after her 3-year- old son. A witness whom Pltf. called to support her contention as to what day the accident occurred, offered surprise testimony that this same son was in the playground, not the apartment, when the accident allegedly occurred. She contended that Deft. negligently allowed the floor tiles to remain broken, cracked, and missing for over a year even though she gave Deft. repeated notice about the condition.

Deft. disputed Pltf. s contention as to where the accident occurred, and contended that she told the emergency room nurse and doctors that she had fallen 3 days earlier in Virginia. Pltf. denied that she had ever been in Virginia. The triage nurse testified that Pltf. told her that she fell on a curb. Deft. also denied Pltf. s claim that it failed to respond to her calls about the broken tiles, and produced two employees who testified that they had made several attempts to enter Pltf. s apartment to fix the tiles, but that she was not home. They testified that they left notes under her door advising her that they would return, but Pltf. never made arrangements to allow the repairmen to enter her apartment.

Injuries: bimalleolar fracture of the right ankle, treated with closed reduction and a long-leg cast. Pltf. developed malunion and nonunion at the fracture site, resulting in a marked deformity of the right ankle. Deft. produced Pltf. s hospital record that indicated that she was non-compliant with her treatment, in that she was not supposed to bear weight on the ankle, but did so, as evidenced by dirty, worn, and broken casts. On two occasions, Pltf. broke off the casts and presented to the hospital bearing weight on the ankle. Pltf. s treating physician conceded that Pltf. s non-compliance contributed to the resulting malunion. Demonstrative evidence: model of foot and ankle bones; X-rays; anatomical diagrams of the ankle; enlargement of emergency room triage note. No offer. Jury deliberation: 3½ hours.

XX/33-12
PREMISES LIABILITY
Dangerous Condition Apartment
Child Allegedly Scalded by Hot Water When Stove Tipped
Settlement $150,000
Case Rubi Martinez, by her m/n/g Concepcion Martinez v. New York City Housing Authority, No. 294 TSN 98
Court New York Civil
Judge Paul G. Feinman
Plaintiff
Attorney(s) Conrad Jordan; New York, NY; trial counsel to Glenn Shore; New York, NY
Defense
Attorney(s) Edward A. **Flores**; New York, NY
Facts The plaintiffs claimed that on Sept. 16, 1993, Rubi Martinez, 3, was scalded by hot water from her kitchen's gas range. The plaintiffs contended that Martinez placed her weight on the open range door, causing the entire appliance to tip over, thus spilling boiling water from the range top onto Martinez. They further contended that the unbracketed range was a dangerous condition, and claimed that the defendant, the New York City Housing Authority, was negligent in failing to bracket the range, and in failing to warn tenants of unbracketed ranges' tendency to tip when even a modest force is applied to the door. The plaintiffs added that the housing authority should have known of the tipping danger, because it had been purchasing new ranges for almost 200,000 rental units every 15 years, and warnings and brackets became standard in 1992.
The New York City Housing Authority contended that it had no knowledge of this hazard until 1994, and that it would be overly burdensome to bracket old ranges or issue a warning regarding all old ranges. It further argued that when the plaintiffs' range was originally installed in approximately 1980, there was no industry standard requiring warnings or brackets on ranges. The plaintiffs conceded this point.
The New York City Housing Authority also contended that the range did not tip, and cited testimony from both an emergency-room physician and a police detective, which revealed that the plaintiffs' early statements did not indicate that the range tipped. The housing authority argued that Rubi Martinez pulled the pot of water off the range after climbing up on the oven door. Concepcion Martinez, who speaks Spanish, asserted that the early statements were incomplete, and that there may have been a miscommunication because of language problems. She argued that the burn pattern was inconsistent with the suggestion that the child spilled water onto herself.
Injuries first-degree burns; scar and/or disfigurement; second-degree burns
Rubi Martinez suffered first- and second-degree burns to her groin, left hip and left buttock, resulting in permanent scars. She asked the jury for $ 1.1 million.
Result This action settled for $150,000 during jury deliberations. A $155, 000 Medicaid lien was reduced to $20,000, pursuant to negotiations.

XVI/35-3 FALLDOWN OIL ON LOBBY FLOOR DEFENSE VERDICT

Richard Jackson v. New York City Housing Authority 120155/96 6-day trial Verdict New York Supreme

Judge: Carol E. Huff

Verdict: Defense verdict (6/0). Post-trial motions were denied. Jury: 2 male, 4 female.

Pltf. Atty: Mitchel H. Ashley of Shandell, Blitz, Blitz, Glass, Bookson & Kern, L.L.P., Manhattan
Deft. Atty: Edward A. **Flores**

Facts: This accident took place on 3/14/96 at 10:15 PM at the lobby entrance of a building on Seaver Ave. in Staten Island. Pltf., a 38-year-old unemployed mechanic at the time, testified that he slipped on a puddle of cooking oil on the floor directly against the inside of the front door to the building. He claimed that Deft. had actual notice of the oil spill through a phone call by a tenant to Deft.'s management office, placed between 7 and 7:30 PM that night . Pltf. claimed that Deft. had sufficient time to correct the condition.

Deft. argued that at the time of the accident, there were no janitors on duty to clean up spills, and noted that tenants were required to call the emergency service squad (ESS) for maintenance work needed after 4:30 PM. The building superintendent confirmed that the management office closes at 4:30 PM. He testified that time records revealed that on the date of this accident, all management office employees were gone for the day before 7 PM. Deft., therefore, disputed the claim that a call was placed between 7 and 7:30 PM. The coordinator of ESS also testified that no calls were received by ESS between 7 and 7:30 PM regarding the oil spill, but noted that records indicated that a call was received at 9:06 PM for the oil spill. However, testimony indicated that the ESS team for Staten Island was on another emergency call in another development 3-4 miles away between 9:06 and 10:15 PM. Deft. argued that 68 minutes was not sufficient time for ESS to respond to the oil spill call, particularly in light of the team's response that night to a life-threatening elevator shaft emergency in another development at the time the call was received.

Injuries: torn rotator cuff of the left (dominant) shoulder; pulled left groin muscle. Pltf. developed deep vein thrombosis of the left leg 1 month post-accident, and of the right leg 1 year following the accident. Deft.'s experts testified that Pltf. did not sustain a rotator cuff tear, as confirmed by arthroscopy. Deft.'s experts also argued that the deep vein thrombosis was not related to Pltf.'s fall, but to his pre-existing heart condition, which pre- disposed him to the condition. Demonstrative evidence: anatomical diagrams and model of bones and muscles of the shoulder; MRI films; photographs of the oil on the lobby floor. Offer: $40,000; demand: $ 125,000; amount asked of jury: $300,000. Note: An excessive Medicare lien prevented settlement. Jury deliberation: 3 hours.

IX/4-5 FALLDOWN -- SNOW AND ICE ON SUBWAY STAIRS -- DEFENSE VERDICT

Justino Osorio v. NYCTA 14209/86 10-day trial Judge Anita R. Florio, Bronx Supreme

VERDICT: Defense verdict (5/1). Jury: 1 male, 5 female.

Pltf. Atty: Mark A. Eskenazi of Talisman, Rudin & Eskenazi, Mineola
Deft. Atty: Edward A. **Flores**

Facts: Pltf., who was 68 years old and retired at the time of the incident on 2/8/86, claimed that he slipped and fell as he descended from the street into the subway station at Longwood Ave. in the Bronx. He claimed that he slipped on an accumulation of snow and ice on the second step at the bottom of the stairway. Pltf. claimed that Deft. negligently maintained the stairwell. The New York City police officer who responded to the accident scene testified that he recalled that the subway stairs were icy. The NYCTA police officer who filed the accident reported testified that the stairs were clean and dry. Deft.'s medical expert testified from the hospital records that Pltf. had a blood alcohol content (BAC) of .26, 2½ times the legal limit for driving while intoxicated in New York State. Deft. contended that Pltf.'s BAC would have seriously impaired his vision, depth of perception, and motor skills.

Injuries: laceration of the occipital scalp with profuse bleeding; dizziness and headaches. Pltf. claimed that CAT scans indicated a cerebral hemorrhage in the sub-arachnoid space of the parietal lobe of the brain and a contusion of the frontal right lobe. Deft. contended that Pltf. was treated and released from hospital on 2/15/86 with no neurological deficits, and that a subsequent CAT scan in April 1986 also indicated no abnormalities. Deft.'s neuropsychiatrist pointed out that it was inconsistent for Pltf. to claim a loss of sensation on the right side of his body with alleged neurological damage to the right side of his brain. Pltf. claimed that he experiences continuing headaches and dizziness three to four times per week. Offer: $21,000; demand: $75,000. Jury deliberation: 2 hours.

VII/48-5 FALLDOWN - SUBWAY STEPS - DEFENSE VERDICT

Barbara Patralites v. NYCTA 16725/84 8-day trial Judge Bernard Burstein, Bronx Supreme

VERDICT: Defense verdict (6/0). Post-trial motions were denied. Jury: 2 male, 4 female.

Pltf. Atty: Nicholas I. Timko, Manhattan
Deft. Atty: Edward A. **Flores**

Facts: Pltf., age 37 at the time, claimed that at about 6:30 PM on 12/29/83, she slipped on ground glass on the stairway at Deft.'s train station on Middletown Rd. in the Bronx, falling 12 steps to the bottom. She claimed that the glass was on the stairs on the morning of the accident. Deft. produced the Transit Authority officer who inspected the stairs 20 minutes after the fall. He testified that the stairs were free of debris. Deft. denied the existence of a dangerous condition and contended that it had no actual or constructive notice of glass on the stairs.

Injuries: torn medial meniscus. Pltf. underwent a meniscectomy in June 1986, 2½ years after the accident. Deft. produced the arthrogram of Pltf.'s knee and contended that it did not show a torn meniscus. Deft.'s expert testified that the operative record of the meniscectomy revealed the torn meniscus was of recent origin and contended that it was not related to her fall in the subway station.

At the time of the accident, Pltf. was the director of contract administration for a record company. Pltf. had testified that she lost her job because she could not return to work for almost 2 months after the surgery. She was then impeached by subpoenaed personnel records which indicated that she had voluntarily resigned before the surgery and stated both business and personal reasons for doing so. Pltf. had also testified that she did not engage in strenuous physical activities in the period between the accident and surgery. Deft. produced records from a physical fitness center which indicated that Pltf. had attended the gym for a year after the accident and before her surgery. Specials: $5,000 for medical expenses; $25,000 for lost wages. Offer: $20,000; demand: $50,000. Jury deliberation: 1 hour, 45 minutes.

XXV/29-01
PREMISES LIABILITY
Negligent Repair and/or Maintenance Dangerous Condition Slip and Fall Government Municipalities
Plaintiff claimed she slipped in subway station's puddle
Verdict Defense
Case Tina Pope v. N.Y.C.T.A. & C.O.N.Y., No. 22962/04
Court Bronx Supreme
Judge Lucy A. Billings

Plaintiff Attorney(s) Marc R. Thompson, Pulvers, Pulvers & Thompson, L.L. P., New York, NY
Defense Attorney(s) Sandra M. **Bonnick**, New York, NY
Facts & Allegations On May 28, 2004, plaintiff Tina Pope, 49, a babysitter, slipped in the subway station that is located at the intersection of East 149th Street and Third Avenue, in the Mott Haven section of the Bronx. She fell and sustained an injury of one ankle.
Pope sued the station's owner, the city of New York, and the station's operator, the New York City Transit Authority. She alleged that the defendants were negligent in their maintenance of the premises and that their negligence created a dangerous condition.
Pope claimed that she slipped in a puddle of rainwater that had leaked from the station's ceiling. Her expert engineer opined that evidence indicated that water had been pouring from the ceiling. The expert also opined that Pope slipped in an area that was marred by defective tiles. Pope's counsel argued that the defendants should have been aware of the defects.
Defense counsel reported that Pope's initial pleadings did not include any allegations that addressed a leaky ceiling, but that the court allowed the addition of those allegations. She also reported that she objected to the inclusion of the allegations, but that the objection was overruled. She contended that the court also denied her attempt to preclude the expert engineer's testimony.
Defense counsel also contended that the station's surface was reasonably safe. She acknowledged that a sudden rainstorm had concluded shortly before Pope's fall, but she argued that the defendants would not have been able to timely address any residual wetness that might have occurred.
The defendants' expert engineer refuted Pope's expert engineer's contention that water could have leaked through the station's ceiling. He presented New York City Transit Authority records and blueprints, and he contended that the documents established that a leak had not occurred in the area of Pope's fall.
Defense counsel further argued that Pope's counsel could not prove that Pope had walked on the defective tiles.
Injuries/Damages fracture, ankle; fracture, malleolus; internal fixation; open reduction; physical therapy; trimalleolar fracture
Pope sustained a trimalleolar fracture, which comprises fractures of the ankle joint's lateral and medial malleoli--the bony protuberances--and a fracture of the posterior edge of the associated leg's tibia. The injury affected her right ankle.
Pope was placed in an ambulance and transported to Lincoln Medical and Mental Health Center, in the Bronx. Her fracture was repaired via open reduction and internal fixation. She also underwent about two weeks of physical therapy. She claimed that she refused to undergo additional surgery that was deemed necessary.
Pope also claimed that her injury produces a limp and that she requires the use of a cane, an assistive walking device and a wheelchair. She further claimed that her disability prevents her resumption of her babysitting duties.
Pope sought recovery of damages for her past and future pain and suffering.
Defense counsel contended that Pope experienced a good recovery.
The defense's expert neurologist opined that Pope's residual injuries merely include a slight deficit of one nerve. He contended that she does not suffer any neurological disabilities.
Result The jury rendered a defense verdict. It found that the defendants were not liable for Pope's fall.
Demand $75,000
Offer $45,000
Trial Details Trial Length: 2 weeks
Jury Deliberations: 30 minutes

XX/24-16 FALLDOWN SUBWAY STAIRS DEFENSE VERDICT ON LIABILITY

Phyllis Gittens v. NYCTA 11399/00 2-day trial Queens Supreme

Judge: Frederick Sampson

Verdict: Defense verdict on liability (6/0). Jury: 2 male, 4 female.

Pltf. Atty: Louis V. Fasulo of Fasulo, Shalley & DiMaggio, Manhattan
Deft. Atty: Sandra M. **Bonnick**, Manhattan

Facts: Plaintiff was a 43-year-old secretary on the date of this accident, which occurred on 5/17/99 at the F subway station located at 179th St. and Hillside Ave. in Queens. Plaintiff claimed that she tripped and fell on the stairs leading from the street to the subway due to a defect on one of the stairs. Plaintiff initially testified at her deposition that she did not know whether it was the fourth or fifth step that caused her to fall. At trial, plaintiff stated that the fifth step had holes in it and part of the step was missing. Defendant argued that it had neither actual nor constructive notice and contended that if the step was defective, the condition was de minimis.

Injuries: (not before the jury) strains and sprains of the neck, lower back, left shoulder, and left foot. Demonstrative evidence: photos of the stairs. Offer: $7,500; demand: $60,000. Jury deliberation: 20 minutes.

XX/7-38 FALLDOWN HEIGHT DIFFERENTIAL BETWEEN SIDEWALK AND VENT ALLEGEDLY CAUSED BY NEGLIGENT INSTALLATION CASE DISMISSED DURING LIABILITY TRIAL FOR FAILURE TO PROVE PRIMA FACIE CASE

Esther Caicedo v. NYCTA 6446/00 3-day trial Queens Supreme

Judge: James P. Dollard

Decision: Case dismissed pursuant to oral argument at the close of defendant s liability case, before summations. Former defendant City of New York settled for $1,500 before jury selection.

Pltf. Atty: Tina Russell of Trolman, Glaser & Lichtman, P.C., Manhattan
Deft. Atty: Sondra **Bonnick**, Manhattan

Facts: Plaintiff, a 72-year-old retiree at the time, claimed that on 11/9/99 she was injured when she tripped and fell due to a height differential between a Transit Authority vent border and the public sidewalk, located on Broadway near Britton St. in Queens. Former defendant City of New York settled before trial. Plaintiff claimed that defendant negligently installed the vent. Defendant moved to dismiss the case for failure to prove a prima facie case because plaintiff could not prove that defendant negligently installed the vent, when the sidewalk was installed, or if it had been constructed incorrectly.

Injuries: (not before the jury case dismissed during liability trial) fractured right (dominant) wrist requiring internal fixation. Demonstrative evidence: enlarged Transit Authority report; photographs of the accident scene. Offer: $25,000; demand: $100,000.

XX/27-12
FALLDOWN
Commuter Claimed Fall on Slippery Subway Stairs
Verdict Defense
Case Cleybis and Faiver Sarmiento v. New York City Transit Authority, No. 12914/99
Court Kings Supreme
Judge Francois A. Rivera

Plaintiff
Attorney(s) Dawn M. Pinnisi; Talisman, Rudin & DeLorenz, P.C.; New York, NY
Defense
Attorney(s) Sandra **Bonnick**; Manhattan, NY
Facts On April 30, 1998, plaintiff Cleybis Sarmiento, a 34-year-old case worker, was at the Flushing Avenue and Broadway subway station in Brooklyn, N.Y. She claimed that a wet, soapy condition on the subway stairs caused her to slip and fall.
The defendant, the New York City Transit Authority, contended that the accident did not happen as claimed, if it happened at all. The schedule of the cleaning personnel revealed that the stairs were never washed, nor was soap or detergent ever used. The defendant further contended that any such cleaning would not take place during rush hour. There were no witnesses to the fall, no accident reports, and no record of a complaint by the plaintiff or any other passengers.
Injuries fracture, coccyx; herniated disc at L4-L5
The plaintiff claimed that she fractured her third coccygeal vertebra and sustained a herniated lumbar disc at L4-L5. The injuries were not before the jury in this case decided on the issue of liability.
Result The jury returned a defense verdict on the issue of liability.
Demand $40,000
Offer $15,000
Trial Details Trial Length: 4 days

V/1-74 FALLDOWN - ICE ALLEGEDLY FORMED BY WINDOW WASHING RUNOFF

Mary Ann Greene v. Irving Trust Co., Exec. of the Will of Harold Uris; City of New York; and Prudential Building Maintenance Corp. 82 Civ 1130 3-day trial . Judge Morris E. Lasker, Southern District

VERDICT: Defense verdict for Prudential. Uris dismissed during trial. City of New York dismissed before trial. Notice of Appeal by Pltf.

Pltf. Atty: Charles B. Updike and Beth L. Kaufman of Schoeman, Marsh, Updike & Welt, Manhattan

Deft. Atty: Edwin H. **Knauer**, Manhattan, for Prudential

Peter J. Esposito of Griffin, Scully & Savona, Manhattan, for Uris

Facts: Pltf., age 46 at the time of the accident, alleged that she slipped and fell on ice which had collected on the sidewalk at the southwest corner of Park Ave. and 50th St. in Manhattan on 12/5/80. Uris was the building owner; Prudential was the maintenance company which, before the accident, had cleaned the building's windows. Pltf. contended that Prudential's employees allowed water to run off the building and form ice on the sidewalk. Prudential contended that no water collected on the outside of the building, because it was cleaning the windows on the inside . Defts. also argued that the building had three setbacks which would have collected the water before it reached the ground. The trial judge refused Pltf.'s request for a res ipsa loquitur charge against the building owner. Injuries: fractures of the right tibia and fibula requiring internal fixation.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART PP1

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LUZ RODRIGUEZ,

Plaintiff,

-against-

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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DECISION and ORDER
Index No. 300689/09

Present: Hon. Mitchell Danziger
AJSC

Recitation, as required by CPLR §2219(a), of the papers considered in reviewing the underling motion for summary judgment:

Notice of Motion and annexed Exhibits.....1
Affirmation in Opposition and annexed Exhibits.....2
Reply Affirmation.....3
Corr. dated 8/24/2011.....4

This action involves an alleged slip and fall due to a wet substance on a stairwell on March 5, 2008.

Defendant, New York City Housing Authority (hereinafter "NYCHA") seeks summary judgment pursuant to CPLR 3212 dismissing the plaintiff's complaint on the grounds that the defendant neither created nor had actual or constructive notice of the wet substance that was on the stairwell.

The complaint alleges that on March 5, 2008 the plaintiff, Luz Rodriguez slipped and fell at a NYCHA property known as Castle Hill Houses which is located at 2125 Randall Ave, Bronx, New York. Plaintiff claims that her injuries occurred due to the negligence of the defendant.

Plaintiff asserts in her verified bill of particulars that she resides at the subject building in apartment No. 11M. The accident took place on March 5, 2008 at approximately 5:15 am. The

occurrence took place on stairwell B between the 4th and 5th floors. Plaintiff described the cause of her accident as follows:

> Plaintiff was descending the subject stairs and slipped on a liquid substance believed to be urine. The lack of non-skid surface on the stairs caused the plaintiff to fall and become injured. The length of time these defective conditions existed is unknown.

Plaintiff testified at a 50-H hearing about the happening of the accident. She fell down the steps of stairwell B, between the fifth and fourth floors and broke her ankle. Plaintiff described the accident as follows:

> Q. What happened?
>
> A. I was on my way to work, I was going down the stairs between the fifth and the fourth floor, the second to last step I slipped.
>
> Q. What did you slip on?
>
> A. It was wet, I am not sure if it was urine or it was water, but it was wet.
>
> Q. ..was it clear, was it colored?
>
> A. No, it was clear.
>
> Q. Did it have an odor to it?
>
> A. Yes, it stunk.
>
> Q. Like what?
>
> A. More like urine.

The aforesaid wet condition covered the steps from the first step at the bottom to the fifth

step. The plaintiff was descending the stairs from the fifth floor. He described the wet condition as follows:

Q. Did the wetness cover the entire step?

A. Just about half from my left foot on - -

Q. From where?

A. From the left foot to the handrail that is where it covered.

As he was walking down the stairwell, he was walking closer to the handrail on his left-hand side. Further, he was holding onto the handrail. Plaintiff testified that no one witnessed her fall. Her left foot slipped going down the steps and she landed on her buttocks on the first step. The steps were made of concrete. Rodriguez lived at the building in question with her mother, Iris Lorenzo who was the tenant of record. She testified as follows about the condition of the stairwell:

Q. Did you see any sort of urine as you waked from the 11th floor down to the fifth floor?

A. Oh, yes, just about on every landing had urine or some type of water.

Q. Including the floors above where you fell?

A. That is correct....

Q. What was the weather like at the time of the accident?

A. It was raining...

A. I think it was drizzling.

Plaintiff testified at her examination before trial that she was wearing Nike sneakers at the time of the accident. She was carrying a blue Coach hand bag and a small umbrella in her right

hand. Plaintiff entered stairwell B on the morning of the accident on the 11th floor. She described the lighting in stairwell B between the fifth and fourth floor as good. Rodriguez described the stairs between the fifth and fourth floor as one continuous set of steps, followed by a landing. She described the steps as having the same color as concrete with a red handrail on the left as you descend the stairs from the fifth to the fourth floor. She described the condition of the steps between the fifth and fourth floors as follows: "Wet and urine." Her testimony was as follows:

Q. ... where on the steps was that urine?

A. All over. It was closer to the fourth floor.

Q. When you say "all over," was there urine on each step between the fifth and fourth floors?

A. Like, a little drop of each, yes...

Q. There's a puddle of urine on the second-to-last step going down to the fourth floor, and there are little droplets of urine on every other step?

A. Yes...

Q. How much of the step did this wetness take up? Half the step, a quarter of the step, something else?

A. Maybe half.

Plaintiff's accident occurred on the second to the last step when her left foot slipped first. Plaintiff stated that the reason for her fall was "urine."

Plaintiff testified as follows about use of the stairs in question prior to the accident:

Q. On those occasions when you used Stairwell B before the date of

the accident, how often would you notice that there was any sort of wetness on the stairs, specifically between the fourth and fifth floors?

A. Most of the time.

Q. Also 90 percent of the time?

A. Yes.

Q. Do you recall - - when was the last time you used Stairwell B before March 5, 2008?

A. That, I don't recall.

Q. Do you recall if it was maybe the day before, a week before?

A. Maybe a week before.

Q. But you're not sure?

A. No.

Further, when she last used Stairwell B before the date of the accident she didn't notice wetness or urine on the steps in the area in question. Further, she did not make any complaints to the Housing Authority prior to the date of the accident about the condition of the steps in Stairwell B nor is she aware of anyone who made such complaints. The plaintiff did not report her accident to the Housing Authority.

Movant also submits the examination before trial transcript of Rosa Perez, defendant's employee who works as a caretaker. Perez worked at the Castle Hill Houses on the date in question. She described her duties for the period in question as follows: "Make sure we all go upstairs, check the buildings, sweep up the building, make sure there's no pee on the steps or juice, make sure the elevators are clean, the lobbies are done." She identified the building where she worked as "Building

No. 3," which was part of Castle Hill Houses. Defendant's employee, Luther Gillespie identified Building No. 3 as the building in question. Gillespie supervised the caretaking in March, 2008. In March, 2008 their job duties included "a walk-down of the building to see if ....if there's any emergencies that they need to address, as far as urine, feces...Then if they notice anything wet in the stairwell or the hallways, they would have to go back and spot mop." The caretakers shift for Building 3 started at 8:00 a.m. The caretakers shift lasted eight hours. Gillespie testified as follows:

Q. Back in 2008, would wet urine or feces be a common occurrence in Building 3?

A. Yes.

Gillespie testified as follows about urine at the building:

Q. During the period of March of 2007 through March of 2008, did any of your caretakers ever advise you or report to you as to how often they would find wet urine or feces during their shifts?

A. Yes.

Q. Generally, what would they say to you?

A. Well, they find it all the time.

Q. All the time meaning what?

A. Is it every day, on several occasions each day or something else?

A. Well, every day.

The aforesaid condition was cleaned by mopping. Gillespie also testified when asked whether urine or feces was commonly found at the building in question from March, 2007 to March, 2008 he stated that he was not sure. He also testified that when he earlier stated that urine and feces

were found "all the time every day" for the aforesaid period he meant to say at the project in general which included Building 3.

The building where the plaintiff's accident occurred has 14 floors which included three staircases known as A,B and C. She was responsible for cleaning the entire building. Perez testified as follows:

> Q. After 4:30 pm, were there any caretakers at the building?
>
> A. After 4:30, no. . .
>
> Q. Now, back in 2008 from the beginning of the year through March 6th of 2008 on the days that you worked, would you leave work promptly at 4:30?
>
> A. No. Before I leave, I go upstairs and check my building, and whatever I see dirty or messy, I clean it up.

Perez cleaned the stairwells at 8:00 a.m., 10:00 a.m. and testified as follows: "At 10; I go and check. That's break time, but I'll still check the building and try to clean the pee that I saw. Then I go back again after break time to check."

From 2007 through March 6, 2008 Perez observed urine on the staircases on a regular basis. The reason for the aforesaid she attributes as follows: "The animals that they have in the buildings and people." She also stated as follows for the same period: "Everybody knows that the people pee, urinate in the steps."

Perez testified as follows about the existence of urine on the steps during her time as a caretaker at the building in question:

> Q. With respect to Stairwell B, approximately how many times

would you see urine on the stairs of Stairwell B?

A. Of B. Two or three times. Two or three a day...

Q. Now, when you saw this urine condition on Stairwells A, B and C, were they on any particular set of stairs, between any particular floors, or would it just be random?

A. It's random, all, all. Its different. It could be sometimes A. It could be C, D or B, whatever.

Perez testified as follows about spot mopping: "I do my spot mops every day." Further, "they know I mop before I leave the building when I check it at 3...3,4."

In support of the motion the defendant submits an Affidavit from defendant's superintendent Rodney Davis which concluded as follows: "I conducted a search for computer generated work tickets that encompasses Stairwell B inside 2125 Randall Ave, Bronx, New York for the period 3/4/07 to 3/5/08, and no work tickets or complaints were found."

In opposition, plaintiff asserts that an issue of fact exists whether the presence of urine on the steps of the building in question as to an ongoing and recurrent condition which was left unaddressed by the defendant. Further, Nicholas Bellizzi, a Professional Engineer submits an Affidavit which concludes as follows: "the plaintiff, Luz Rodriguez was not afforded a safe tread walking surface...The above-described stairway defect, combined with the presence of urine on the subject stairway, was a known and recognized pedestrian safety hazard which I found to be a significant contributing cause and/or substantial cause of Luz Rodriguez's accident and/or her resulting injuries."

In addition, the sworn Affidavit of Rachel Rivera states as follows: "I have been a tenant in

this building since late April, 2000... Specifically, she fell on Stairwell B when she was walking down from the 8th floor to the 7th floor. This happened in February, 2008. My daughter fell on slippery stairs... After she fell I complained to the maintenance person. The stairs are frequently moist and have the smell of urine."

In opposition, plaintiff also submits an Affidavit from Maria Melendez which states as follows: "I reside at 2125 Randall Ave, Apt # 3F, Bronx, New York 10473. I have been a resident in this building for the past 21 years...For example, some people defecate and urinate on hallways, and the stains stay. When people urinate, the areas around hallways become moist and slippery and this creates unsafe conditions....About six months ago I fell on the stairwell when I was going down from the third floor to the second floor. The floor was very slippery, ...I have made complaints approximately on three occasions in the past."

DISCUSSION

The proponent of a motion for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." (*JMD Holding Corp v Congress Financial Corporation*, 4 NY 3d 373 [2005], quoting *Alvarez v Prospect Hospital*, 68 NY 2d 320 [1986]; *Lesane v Tejada*, 15 AD 3d 358 [2nd Dept 2005].)

To obtain summary judgment in a slip-and-fall action the defendant has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence. (*See*, *Rodriguez v. 705-7E 179th St. Hous. Dev. Fund Corp.*, 79 AD 3d 518, 519, 913 N.Y.S. 2d 189 [2010]. In this case the defendant demonstrated that it did

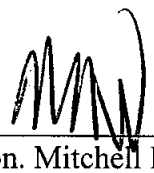
not create nor have actual notice or constructive notice of the wet substance on the stairs. Further, plaintiff does not recall when she used the stairs in question prior to her accident. In addition, Housing Authority employees presented testimony that the stairs in question were cleaned daily. (*See*, *Pfeuffer v. New York City Housing Authority*, 93 AD 3d 470 (1st Dept., 2012).

For the foregoing reasons, the defendant's motion for summary judgment is granted. Accordingly, upon movant's service of a copy of this order with notice of entry upon plaintiff's counsel and the Clerk, the within action will be dismissed.

This constitutes the Decision and Order of this Court.

Dated: May 22, 2012

So Ordered,



Hon. Mitchell Danziger

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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ELENA ROSARIO,

Plaintiff,

Index No. 114517/09

-against-

DECISION/ORDER

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	
Cross-Motion and Affidavits Annexed.....	2
Answering Affidavits to Cross-Motion.....	3
Replying Affidavits.....	4
Exhibits.....	5

Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained when she slipped and fell on debris and liquid on an interior staircase in an apartment building located at 514 West 134th Street, New York, New York on October 15, 2008. Defendant New York City Housing Authority ("NYCHA") now moves for an order pursuant to CPLR §3212 granting it summary judgment on the grounds that it did not cause and create the condition and it did not have notice of the condition. For the reasons set forth below, NYCHA's motion for summary judgment is granted.

The relevant facts are as follows. On January 12, 2009, plaintiff allegedly slipped and fell

while she was descending an interior staircase in an apartment building located at 514 West 134th Street, New York, New York (the "building"), part of the NYCHA-owned Manhattanville Houses. Plaintiff alleges that on the day of her accident, she was working for Priority Home Care as a home attendant caring for Nilva Olan, a tenant in the building. Plaintiff's usual work hours with Ms. Olan were from 9:00 a.m. until 3:00 p.m, Monday through Saturday. On the date of the accident, plaintiff reported for work at Ms. Olan's apartment, Apt. 4C, on the 4th Floor at 9:00 a.m. She alleges she got to the apartment by walking up to the fourth floor after she was buzzed into the building by Ms. Olan. The stairway that she ascended to get to Ms. Olan's apartment was the same stairway that she used six days a week and the same stairway that she used to descend from Ms. Olan's apartment on the day she was injured. It is undisputed that it is the main staircase in the building.

Plaintiff alleges that when she entered the building at 9:00 a.m. on the date of the accident, she did not see any liquid or debris on the stairway and that she did not have any problem ascending the stairs to get to Ms. Olan's apartment. Further, plaintiff described the weather on the date of her accident as "normal" and she did not remember exactly when it had last snowed but that it hadn't snowed or rained that day. She alleged that there was some snow on the ground outside at the time of her accident but that the snow was not deep.

On the date of the accident, at approximately 11:00 a.m., plaintiff alleges that she and Ms. Olan left Ms. Olan's apartment to go to Ms. Olan's foot doctor appointment. Plaintiff descended the stairway first and was followed by Ms. Olan. Plaintiff and Ms. Olan descended the staircase from the fourth floor to the second floor without any problem. As plaintiff was descending from the landing between the second and first floors, she alleges that she stepped down with her right

foot onto the lowest step and slipped and fell. Plaintiff alleges that when she got up from the floor, she noticed that her pants were "wet with something sticky, greasy or sticky." She said that she then saw wet foot prints on the floor of the lobby and that she was able to see bags of candy, liquid and grease on the stairway where she fell. Plaintiff testified that she did not see these items when she ascended the stairway at 9:00 a.m. earlier that day.

Plaintiff further alleges that she did not see anyone that she believed to be employed by NYCHA on the date of her accident and she had no contact with anyone from NYCHA on the date of her accident. She alleges that she never discussed her accident or the condition of the stairway with anyone from NYCHA and never complained to a NYCHA employee about the condition of the stairway prior to her accident. When plaintiff returned from Ms. Olan's foot doctor appointment a few hours later, she and Ms. Olan ascended the same stairway that she had fallen on earlier and both the lobby and the stairway had been cleaned between then and the time of her accident.

A defendant who moves for summary judgment in a slip and fall case has the initial burden of making a *prima facie* showing that it did not cause the condition and that it did not have actual or constructive notice of the condition. *See Branham v. Loews Orpheum Cinemas,* 31 A.D.3d 319 (1st Dept 2006). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." *Gordon v American Museum of Natural History*, 67 N.Y.2d 836, 837-838 (1986). Further, "when a landowner has actual knowledge of the tendency of a particular dangerous condition to reoccur, he is charged with constructive notice of each specific reoccurrence of that condition." *Weisenthal v Pickman*, 153 A.D.2d 849,

851 (2d Dept 1989). However, a "general awareness" is insufficient to constitute constructive notice. *See Gordon*, 67 N.Y.2d at 837-838. Plaintiff is "required to show by specific factual references that the defendant had knowledge of the allegedly recurring condition." *Stone v Long Is. Jewish Med. Ctr.*, 302 A.D.2d 376, 377 (2d Dept 2003). Moreover, "a prima facie case of negligence must be based on something more than conjecture; mere speculation regarding causation is inadequate to sustain the cause of action. Conclusory allegations unsupported by evidence are insufficient to establish the requisite notice for imposition of liability." *See Mandel v 370 Lexington Ave., LLC*, 32 A.D.3d 302, 303 (1st Dept 2006).

In the instant action, NYCHA has established its prima facie right to summary judgment on the grounds that it did not cause the condition on which plaintiff slipped and fell and that it did not have actual or constructive notice of the condition on which plaintiff slipped and fell. Emerito Mendez, a janitorial Caretaker employed by NYCHA, testified that he was employed as the janitorial Caretaker of the building on the date of plaintiff's accident. Additionally, Caroline Soriano, Supervisor of Caretakers in the Manhattanville Houses for over eight years, provided the work schedule for the building and affirmed that Mr. Mendez performed his usual cleaning functions on the date of plaintiff's accident. Mr. Mendez testified that his usual routine was to sweep and spot mop the lobby area as well as the stairways and hallways of the building on a daily basis between 10:15 a.m. and 10:50 a.m. and that he would spot mop at other times of the day whenever he noticed liquids or debris on the floor of the building or on the stairways. Mr. Mendez further testified that he did not place the items on which plaintiff slipped and fell on the stairway. He also testified that he had no personal knowledge of plaintiff's accident and only learned of the accident in conjunction with the lawsuit. Mr. Mendez further testified that the

only complaints he received from tenants in the building were, on occasion, when items of furniture were left in the hallway or on the floors of the building. Additionally, Ms. Soriano affirmed that she did not receive any tenant complaints prior to January 12, 2009 regarding janitorial conditions in the building. Moreover, Mr. Mendez noted that there generally was not much debris on the stairway on which plaintiff fell but that the debris situation was worse on the sixth floor stairway leading to the roof where kids who lived in the building would sometimes congregate. Mr. Mendez testified that he had reported the tenant teenager situation that was occurring on the roof to his employer and a notice was sent out to the tenants regarding such conduct.

In response, plaintiff has failed to raise an issue of fact as to whether NYCHA caused the condition or whether NYCHA had actual or constructive notice of the condition. As an initial matter, plaintiff has offered no evidence establishing that NYCHA caused the condition as she has not alleged or shown that NYCHA employees deposited the garbage or liquid on the stairs. Further, plaintiff's assertion that NYCHA caused the condition by failing to place mats in the lobby on the date of plaintiff's accident is without merit. Mr. Mendez testified that if it had rained a lot or was snowing, a rubber mat would be placed along the length of the lobby of the building from the second door leading from the foyer up to the beginning of the stairway. It is undisputed that on the day of plaintiff's accident, it was neither snowing nor raining and it had not snowed or rained for at least 24 hours before plaintiff's accident. Moreover, plaintiff has made no allegation that she slipped and fell on snow or water brought in from the outside but rather that she slipped and fell on a greasy, sticky substance and debris including bags of candy. Even if NYCHA was negligent for not placing mats in the lobby on the day of plaintiff's

accident, which it was not, plaintiff's accident was not due to such negligence as placing mats in the lobby would not have prevented the grease, sticky liquid and garbage from being on the stairway on which she fell. Moreover, it is well-settled that a defendant is "not required to cover all of its floors with mats, nor continuously mop up all moisture resulting from tracked-in melting snow." *Kovelsky v. The City University of New* York, 221 A.D.2d 234 (1st Dept 1995) *citing to Miller v. Gimble Bros.*, 262 N.Y. 107 (1933).

Additionally, plaintiff has failed to raise an issue of fact as to whether NYCHA had actual or constructive notice of the condition. Plaintiff testified that she did not complain to anyone prior to her accident about the condition of the particular stairway on which she fell nor has she presented any evidence that defendant was aware of the specific condition on the stairs which allegedly caused her to fall. Plaintiff's testimony that Ms. Olan had complained to the super about the janitorial conditions in the building on prior occasions is insufficient to constitute actual notice of the specific condition on which plaintiff fell. The First Department has held that "[e]vidence of a general awareness of debris and spills in the stairway does not require a finding that defendant is deemed to have notice of the condition that caused plaintiff to fall." *See Torres v. New York City Hous. Auth.*, 85 A.D.3d 469 (1st Dept 2011). Plaintiff has failed to raise a factual issue as to whether NYCHA knew about the specific condition on the stairway on which she fell and failed to remedy it prior to her accident.

Moreover, in order to establish constructive notice of an alleged defect, the alleged defect must (1) be visible and apparent and, (2) exist for a sufficient length of time prior to the accident to permit (a) discovery of the defect and (b) time to remedy the defect. *See Gordon*, 67 N.Y.2d at 837-38. As an initial matter, plaintiff has failed to raise an issue of fact as to whether the

condition was visible and apparent. Plaintiff's own testimony demonstrates that she did not even see the debris or sticky, wet substance on the stairway prior to her fall. Further, plaintiff has failed to raise an issue of fact as to whether the condition on the stairway existed for a sufficient length of time prior to her accident to allow NYCHA to discover the condition and allow for time to remedy the condition. According to plaintiff's own testimony, there was only a two hour period between the time plaintiff ascended the stairway at 9:00 a.m., when plaintiff alleges the stairway was clear of debris and liquid, and the time plaintiff descended the stairway at 11:00 am. when she slipped and fell on the condition. Plaintiff has not put forth any evidence disputing the fact that the stairway was cleaned sometime between 10:15 a.m. and 10:50 a.m. on the day of her accident. Thus, the debris and liquid on which plaintiff slipped and fell could have been deposited there only minutes or seconds before plaintiff's accident. Any finding as to when the debris and liquid came to be placed on the stairway would be based solely on speculation which is not enough to support an allegation of constructive notice. *See Penny v. Pembrook Mgmt.*, 280 A.D.2d 590 (2d Dept 2001)(holding that because injured plaintiff testified that she did not see patch of ice in parking lot anytime before her accident, any finding as to when the ice patch developed is pure speculation, and thus insufficient to support allegation of constructive notice of the ice patch); *see also Gordon*, 67 N.Y.2d at 838.

Although plaintiff asserts that she always saw garbage in the stairway of the building, constructive notice cannot be imputed to NYCHA on that basis. The Court of Appeals has held that

> neither general awareness that litter or some other dangerous condition may be present (citation omitted), nor the fact that plaintiff observed other papers on another portion of the steps approximately

> 10 minutes before his fall is legally sufficient to charge defendant with constructive notice of the paper he fell on.

Gordon, 67 N.Y.2d at 838. Rather, a "plaintiff must show that the defendant had knowledge of the particular dangerous condition that is 'qualitatively different' from a mere 'general awareness' that a dangerous condition may be present." *Gonzalez v. Wal-Mart Stores, Inc.*, 299 Fed.Supp.2d 188 (S.D.N.Y. 2004). Thus, NYCHA's motion for summary judgment on the grounds that it did not cause the condition on which plaintiff slipped and fell and it did not have actual or constructive notice of the condition on which plaintiff slipped and fell is granted.

Accordingly, NYCHA's motion for summary judgment dismissing plaintiff's complaint is granted. The Clerk is directed to enter judgment in favor of NYCHA and against plaintiff. This constitutes the decision and order of the court.

Dated:

Enter: _____
J.S.C.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Present: Honorable Ben R. Barbato

JOHN P. VITALE,

Plaintiff,

DECISION/ORDER

-against-

Index No.: 300618-BTS-2007

3800 BROADWAY ASSOCIATES LLC, VERIZON COMMUNICATIONS INC. and JORDAN DANIELS ELECTRICAL CONTRACTORS, INC., FLEET NATIONAL BANK n/k/a BANK OF AMERICA, N.A., BANK OF AMERICA, N.A. as successor by merger to FLEET NATIONAL BANK, BANK OF AMERICA CORPORATION and "XYZ CORPORATION" (1-5),

Defendants.

BANK OF AMERICA, N.A.,

Third-Party Plaintiff,

-against-

BNF CONTRACTORS, INC.,

Third-Party Defendant.

The following papers numbered 1 to 13 on this motion for summary judgment and cross-motion to amend noticed on June 29 and August 22, 2011, and submitted as Nos. 1 and 6 on the Motion Calendar of August 22, 2011 of Part 32.

Papers Submitted	Numbered
Notice of Motion, Affirmation & Exhibits (Knauer)	**1, 2, 3**
Memorandum of Law (Knauer)	**4**
Notice of Cross-Motion, Affirmation & Exhibits (Rosen)	**5, 6, 7**
Affirmation in Opposition (Fitzpatrick)	**8**
Affirmation in Opposition (Butler)	**9**
Affirmation in Opposition (Schrager)	**10**
Reply Affirmations (Knauer)	**11, 12**
Reply Affirmation (Rosen)	**13**

Upon the foregoing cited papers, Defendant VERIZON COMMUNICATIONS INC. seeks an Order granting summary judgment dismissing Plaintiff JOHN P. VITALE's Complaint

and all cross-claims against it. Plaintiff JOHN P. VITALE seeks an Order pursuant to CPLR §1024 amending the caption of the subject action and substituting the appearing Defendant BNF CONTRACTORS, INC. in place and stead of "XYZ CORPORATION" (1-5). Plaintiff VITALE further seeks an Order permitting Plaintiff to inspect the subject accident location within the subject premises.

This is a personal injury action commenced by Plaintiff JOHN P. VITALE by service of a Summons and Complaint both dated September 18, 2006. As set forth in his original complaint, Mr. Vitale alleges that on November 12, 2003, while employed by Suraco Electrical Enterprise, Inc., he was injured as a result of the Defendants' negligence at a construction site at 3800 Broadway, in the County, City and State of New York.

In support of its motion for summary judgment, Defendant VERIZON COMMUNICATIONS INC. submits the Affidavit of Jane A. Shapker, Assistant Corporate Secretary of VERIZON COMMUNICATIONS INC. and Executive Director for Corporate Governance. Ms. Shapker states in pertinent part: "Verizon Communications, Inc. is, and always has been, a holding company which does not own real property...does not man, work at, or supervise construction or construction sites or employ anyone to do so...has never owned, leased, renovated, operated, or maintained any type of facilities or owned any real property at 3800 Broadway, City of New York, State of New York...has never managed, operated, controlled, inspected, maintained or supervised any construction sites at 3800 Broadway, New York, New York nor anywhere else in the State of New York, nor has any person or entity done so or been employed, retained or contracted with to do so on behalf of Verizon Communications, Inc." [See Shapker's Affidavit, pp.2-3].

In opposition, Plaintiff and Defendants claim that Defendant VERIZON COMMUNICATIONS INC.'s motion is premature since the depositions of the Defendants have not yet been conducted and discovery has not been completed. They base their allegations of negligence on Plaintiff's testimony that on two occasions, two women from Verizon appeared at the premises while Plaintiff was working. [See Plaintiff's October 22, 2007 EBT].

Upon review of Plaintiff's and Defendants' submissions, the Court finds that the moving party VERIZON COMMUNICATIONS INC, has demonstrated its entitlement to summary judgment and that opposition to this motion has failed to raise an issue of fact requiring a trial. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Furthermore, the Court finds that Plaintiff Vitale has established his right to amend the caption in this case and also that he is entitled to conduct an inspection of the premises where the alleged accident took place.

Therefore it is

ORDERED that Defendant VERIZON COMMUNICATIONS INC.'s motion for an Order granting summary judgment dismissing Plaintiff JOHN P. VITALE's Complaint and all cross-claims against it is **Granted**; and it is further

ORDERED that Plaintiff JOHN P. VITALE's cross motion for an Order pursuant to CPLR 1024 amending the caption of the subject action and substituting the appearing Defendant BNF CONTRACTORS, INC. in place and stead of "XYZ CORPORATION" (1-5) is **Granted**. The Clerk is directed to amend the caption to substitute BNF CONTRACTORS, INC. in place and stead of "XYZ CORPORATION" (1-5); and it is further

ORDERED that Plaintiff VITALE's cross-motion for an Order permitting Plaintiff to inspect the subject accident location within the subject premises is likewise **Granted**.

Defendants shall permit Plaintiff to inspect the subject accident location within 60 days from the date of entry of this Order.

The foregoing constitutes the Decision and Order of this Court.

Dated: September 6, 2011

Hon. Ben R. Barbato, A.J.S.C.

Stairs or Stairway — Slips, Trips & Falls — Trip and Fall
Verdict Defense
Case Shaheen Daniels v. New York City Housing Authority, No. 102170/10
Court Richmond Supreme
Judge Charles M. Troia
Date None reported
Plaintiff: Robert D. Becker, Becker & D'Agostino, P.C., New York, NY
Attorney(s)
Defense
Attorney(s) Alexandra Vandoros, Krez & Flores, LLP, New York, NY, trial counsel, Wallace D. Gossett, Brooklyn, NY, New York, NY

Facts & Allegations
On Oct. 10, 2009, plaintiff Shaheen Daniels, 33, unemployed, was walking on the sixth floor outdoor communal balcony at her residence located in the Stapleton Houses on Staten Island, when she was caused to trip and fall on a hole in the walkway. She sustained injuries of an ankle.
Daniel sued the New York City Housing Authority, alleging that a dangerous condition existed on the premises.
The plaintiff contended that the hole constituted a dangerous condition and that the Housing Authority failed to properly maintain the premises. The plaintiff further argued that the maintenance worker admitted to knowing that the defect existed prior to the fall.
A witness, who's apartment was near the alleged defect, testified that she heard the plaintiff fall in the outdoor communal balcony.
The Housing Authority contended that the defect was trivial, and contested the plaintiff's account of events leading to the incident. The defendant noted that the defect was located close to the edge of the walkway, and argued it was in an area where people would not normally walk. The defendant further noted that the ambulance responded to the plaintiff's apartment, not to the area of the alleged fall, which was located on the opposite end of the walkway from Daniel's apartment.
The defendant called the responding EMT, who testified that the plaintiff admitted she fell while running to break up a fight.
The maintenance worker also testified that the defect was in an area of the walkway that abuts the wall, and he did not the defect was significant, as it was in an area where people did not walk.

Injuries/Damages
The trial was bifurcated, and damages were not addressed.
Daniels sustained a displaced tri-malleolar fracture of the right ankle.
Daniels was taken by ambulance to Richmond University Medical Center. She underwent an open reduction, internal fixation procedure days later. She was recommended to treat with physical therapy.
Daniels claimed that the injuries caused pain and limitation that rendered her unable to walk for long periods of time, and caused difficulty performing her regular activities of daily living and taking care of her five children.
She sought recovery of past and future pain and suffering.
The defendant planned to argue that the plaintiff had made a good recovery, as she had only underwent four physical therapy sessions before she stopped treatment.
The defendant's expert orthopedist planned to opine that Daniels had made a good recovery.

Result
The jury rendered a defense verdict.
Plaintiff(s)

Shaheen Daniels
Demand $300,000
Jury Deliberations: 30 Minutes
Jury Composition: Three men, Three women
Plaintiff
Expert(s) None reported
Defense
Expert(s) Edward S. Crane, M.D., orthopedic surgery, New York, NY (did not testify)
Plaintiff(s)
Demographics

Shaheen Daniels Age: 33 **Occupation:** unemployed **Gender:** None reported
Married: None reported
Children: None reported
Children Description: None reported