

Recent Verdict

Derewenda v. Hajec
Supreme Court, Kings County
Index #505709/14
Defense Attorney: John J. Nicolini

Plaintiff, Marian Derewenda, was a 59-year old carpenter who was injured in a trip and fall accident on an interior staircase of defendant's two-family home located in Brooklyn, NY, on January 22, 2014 at approximately 2:00 p.m. As a result of the accident, the plaintiff sustained significant injuries including fractured skull and subdural hematoma. Plaintiff was confined to the hospital and underwent right craniotomy surgery. Plaintiff was alleging various ongoing sequella including traumatic brain injury, vertigo, tinnitus, loss of hearing, left-sided facial droop, post-concussion syndrome and depression.

Defendants owned the subject two-family home for approximately 22 years prior to the date of loss. The home was built in the 1920's. The accident occurred on an interior staircase leading from the second floor to the first floor which contained a handrail on the right hand side as one descended and a carpet runner in the middle of the wooden stairs.

The case was assigned to Judge Wade of Supreme Court, Kings County, and a jury trial was held. On October 26, 2017, the jury returned a verdict in favor of the defense concluding that the plaintiff had failed to prove that the property was not in a reasonably safe condition.

The evidence established that prior to the accident occurring, plaintiff was visiting the upstairs tenants, Conrad Tracz and Helena Tracz. He arrived at the apartment at approximately 10:00 a.m. and left at approximately 2:00 p.m. It was established that he had consumed whiskey while in the apartment. Plaintiff alleged that he had consumed two glasses, whereas the upstairs tenants, via deposition testimony, contend that he had consumed a greater amount. However, both upstairs tenants testified that he did not appear to be intoxicated when he left the apartment.

Plaintiff testified that the staircase was very dark and that he had lost his balance on the third or fourth step from the top when the carpet runner slid out from underneath his feet.

Testifying on behalf of plaintiff was engineer, Robert Schwartzberg, who testified to various issues with the staircase. He testified as follows: the lighting was insufficient and was below industry standards; the riser heights were non-geometric and varied by greater than three-quarter inches; the handrail was two to three inches below industry standards; each of the staircase treads was sloped downward; and the tread widths were three-quarter inch to once inch below industry standards.

Plaintiff pursued a theory that in addition to the carpet sliding from underneath Plaintiff's foot, the accident was also caused due to the aforementioned deficiencies, specifically the fact that the tread sloped downward and the tread width was too narrow, thus permitting plaintiff's foot to slide off the edge.

On behalf of the defense, it was advocated that none of the aforementioned deficiencies caused or contributed to the accident. Rather, plaintiff's own testimony was that the accident occurred solely due to the fact that the carpet runner slid underneath his foot and this testimony was questionable given the plaintiff's consumption of alcohol and some discrepancies in his testimony as to how the accident specifically occurred.

It was further argued that plaintiff's expert was retained for the purpose of finding minor imperfections in the staircase and then attempting to causally connect the imperfections to the accident, which was not supported by the evidence.

It was further argued that although some imperfections existed within the staircase, this was not beyond what would be reasonably expected for an older staircase and certainly did not rise to the level of an unsafe condition.

After deliberating, the jury agreed with the defense arguments, returning a verdict that Plaintiff failed to establish that the plaintiff failed to establish that the defendants were negligent in maintaining the stairway in a reasonably safe condition.