

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

DeCarbo v. Omonia Realty Corp.

2020 N.Y. Slip Op. 01555 (N.Y. Ct. App. 2020) · No. 11205 · Decided March 5, 2020

SUMMARY

The Appellate Division, First Department, reversed the denial of defendants' motion for summary judgment in a premises-liability action involving a plaintiff who slipped on a worn marble stair tread. The court held that a worn marble tread, without more, was not an actionable defect and that plaintiff's evidence failed to raise a triable issue of fact regarding inadequate slip resistance or causation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Richter, J.P.; Oing, J.; Moulton, J.; González, J.
JURISDICTION	New York
DECIDED	March 5, 2020
DOCKET	11205
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment dismissing the negligent ownership, management, and maintenance claim.
STANDARD OF REVIEW	The court reviewed defendants' entitlement to judgment as a matter of law on summary judgment and whether plaintiff raised a triable issue of fact.
PRECEDENTIAL VALUE	Published appellate decision; binding precedent within the First Department to the extent applicable.
PARTIES	Omonia Realty Corp., et al. v. Vanessa DeCarbo

TOPICS

- premises liability
- negligence
- standard of care
- standard of review
- appellate procedure

PRACTICE AREAS

premises liability

negligence

summary judgment

appellate procedure

QUESTIONS PRESENTED

1. Whether a worn marble stair tread, without more, constitutes an actionable dangerous condition supporting a premises-negligence claim.
2. Whether plaintiff's expert submissions raised a triable issue of fact concerning inadequate slip resistance or the cause of her fall.
3. Whether defendants were entitled to summary judgment dismissing the negligent ownership, management, and maintenance claim.

HOLDINGS

1. A worn marble tread, without more, is not an actionable defect.
2. Plaintiff failed to raise a triable issue of fact because her experts did not establish that the stair treads lacked adequate slip resistance under an accepted industry standard.
3. Plaintiff's expert affidavits did not raise a triable issue of fact because their opinions regarding the cause of the slip were speculative.

KEY QUOTATIONS

"A worn marble tread, without more, is not an actionable defect"

"In opposition, plaintiff failed to raise a triable issue of fact."

FACTUAL BACKGROUND

Plaintiff was injured while descending interior stairs in defendants' building. She slipped and fell on a marble step with a worn tread. Plaintiff had abandoned her claim that defendants negligently failed to keep the stairs free of moisture, and her experts relied on an unestablished coefficient-of-friction standard and offered speculative opinions concerning the cause of the fall.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied defendants' motion for summary judgment dismissing the premises-negligence cause of action. The Appellate Division unanimously reversed, granted the motion, and directed entry of judgment dismissing the complaint.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The motion for summary judgment was granted, the complaint was dismissed, and the Clerk was directed to enter judgment accordingly.

CASES CITED

- *Sims v 3349 Hull Ave. Realty Co. LLC*, 106 AD3d 466 (1st Dept 2013)
- *Savio v Rose Flower Chinese Rest., Inc.*, 103 AD3d 575 (1st Dept 2013)
- *Clarke v Verizon N.Y., Inc.*, 138 AD3d 505, 506 (1st Dept 2016), lv denied 28 NY3d 906 (2016)
- *Jenkins v New York City Hous. Auth.*, 11 AD3d 358, 360 (1st Dept 2004)
- *Sarmiento v C & E Assoc.*, 40 AD3d 524, 526-527 (1st Dept 2007)

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