

NEW YORK COURT OF APPEALS

Hutchinson v. Sheridan Hill House Corp.; Zelichenko v. 301 Oriental Boulevard, LLC; Adler v. QPI-VIII, LLC

26 N.Y.3d 66 (2015) · No. Nos. 144-146 · Decided October 20, 2015

SUMMARY

The New York Court of Appeals addresses when an alleged sidewalk or stairway defect is trivial and therefore nonactionable as a matter of law. Applying the rule that courts must consider all facts and circumstances rather than defect dimensions alone, the Court affirmed dismissal in Hutchinson, but reversed summary judgment in Zelichenko and Adler. The Court also discusses the parties' burdens on summary judgment and actual or constructive notice.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Fahey, J.; Chief Judge Lippman; Judge Pigott; Judge Rivera; Judge Abdus-Salaam; Judge Stein
JURISDICTION	New York
DECIDED	October 20, 2015
DOCKET	Nos. 144-146
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs appealed orders of the Appellate Division that granted defendants summary judgment dismissing personal-injury claims based on the trivial-defect doctrine. The Court of Appeals affirmed in Hutchinson and reversed in Zelichenko and Adler.
STANDARD OF REVIEW	On summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law. In evaluating triviality, the court must view the evidence in the light most favorable to the nonmovant and consider all facts and circumstances, not merely the defect's dimensions.
PRECEDENTIAL VALUE	published binding precedent
PARTIES	Leonard Hutchinson, Matvey Zelichenko, Maureen Adler v. Sheridan Hill House Corp., 301 Oriental Boulevard, LLC, QPI-VIII, LLC, Vantage Management Services, LLC

TOPICS

premises liability

personal injury

summary judgment

negligence

standard of review

PRACTICE AREAS

premises liability

personal injury

negligence

civil procedure

QUESTIONS PRESENTED

1. Whether a physically small sidewalk or stairway defect may be deemed trivial and nonactionable as a matter of law based solely or primarily on its dimensions.
2. What facts and circumstances must be considered when determining whether an alleged defect is trivial as a matter of law.
3. Whether defendants established prima facie entitlement to summary judgment on the trivial-defect issue in the Hutchinson, Zelichenko, and Adler cases.
4. Whether the defendants in Zelichenko and Adler established as a matter of law that they lacked actual or constructive notice of the alleged defects.

HOLDINGS

1. A defendant may not obtain summary judgment under New York's trivial-defect doctrine solely on the basis of the dimensions of the alleged defect. The court must consider all facts and circumstances, including the defect's characteristics and the surrounding conditions.
2. The trivial-defect doctrine applies to defects on interior stairways and to privately owned buildings as well as to municipal sidewalks.
3. Summary judgment for Sheridan was proper because the approximately one-quarter-inch-high, five-eighths-inch-diameter metal projection was trivial as a matter of law under the surrounding circumstances.
4. Summary judgment for 301 Oriental was improper because a triable issue existed as to whether the chipped portion of the stair nosing was a trivial defect.
5. Summary judgment for the Adler defendants was improper because they failed to make a prima facie showing that the alleged stairway protrusion was trivial or that they lacked actual or constructive notice.

KEY QUOTATIONS

“Trincere thus recognizes the doctrine that a defect alleged to have caused injury to a pedestrian may be trivial as a matter of law, but requires a holding of triviality to be based on all the specific facts and circumstances of the case, not size alone.” (at 9-10)

“A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses.” (at 12-13)

“In sum, there are no shortcuts to summary judgment in a slip-and-fall case.” (at 21-22)

FACTUAL BACKGROUND

The three plaintiffs were injured after tripping or falling on allegedly defective sidewalks or interior stairways. Hutchinson tripped on a metal object protruding approximately one-quarter inch above a Bronx sidewalk. Zelichenko fell when his foot caught on a chipped portion of the nosing of an interior staircase, and Adler fell on a protrusion or clump in an interior stair tread that had allegedly been painted over. The defendants sought summary judgment, arguing that the defects were trivial and nonactionable and, in some cases, that defendants lacked notice.

PROCEDURAL HISTORY

In *Hutchinson*, Supreme Court granted Sheridan summary judgment for lack of notice, and the Appellate Division affirmed on lack of notice and triviality grounds. In *Zelichenko*, Supreme Court denied summary judgment, but the Appellate Division reversed and dismissed the complaint as involving a trivial defect. In *Adler*, Supreme Court denied summary judgment, while the Appellate Division reversed and dismissed on triviality grounds without reaching notice. The Court of Appeals affirmed the *Hutchinson* order and reversed the *Zelichenko* and *Adler* orders.

DISPOSITION

other

REMAND INSTRUCTIONS

For *Zelichenko* and *Adler*, the Appellate Division orders were reversed and defendants' summary judgment motions were denied. The opinion does not state additional remand instructions. The *Hutchinson* order was affirmed.

CASES CITED

- *Trincere v. County of Suffolk*, 90 N.Y.2d 976 (1997)
- *Guerrieri v. Summa*, 193 A.D.2d 647 (2d Dep't 1993)
- *Wilson v. Jaybro Realty & Development Co.*, 289 N.Y. 410 (1943)
- *Loughran v. New York*, 298 N.Y. 320 (1948)
- *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986)
- *Beltz v. Yonkers*, 148 N.Y. 67 (1895)
- *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836 (1986)
- *Taylor v. New York City Transit Authority*, 48 N.Y.2d 903 (1979)
- *Kearse v. New York City Transit Authority*, 16 A.D.3d 45 (2d Dep't 2005)
- *Cassizzi v. Fordham University*, 101 A.D.3d 645 (1st Dep't 2012)
- *Sawicki v. Conklin Realty Co., LLC*, 94 A.D.3d 1083 (2d Dep't 2012)
- *Vachon v. State*, 286 A.D.2d 528 (3d Dep't 2001)
- *Slate v. Fredonia Central School District*, 256 A.D.2d 1210 (4th Dep't 1998)

- Schenpanski v. Promise Deli, Inc., 88 A.D.3d 982 (2d Dep't 2011)
- Outlaw v. Citibank, N.A., 35 A.D.3d 564 (2d Dep't 2006)
- Julian v. Sementelli, 234 A.D.2d 866 (3d Dep't 1996)
- Bachrach v. Waldbaum, Inc., 261 A.D.2d 426 (2d Dep't 1999)
- Colt v. Great Atlantic & Pacific Tea Co., 209 A.D.2d 294 (1st Dep't 1994)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-new-york-court-of-appeals/2015/hutchinson-v-sheridan-hill-house-corp-zelichenko-v-301-jogktbok>