

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

Jadeen Minor v. East Harlem Tutorial Program, Inc., et al.

Minor v. East Harlem Tutorial Program, Inc., 2020 N.Y. Slip Op. 05288 (App. Div. 2020) · No. Appeal No. 11904; Case No. 2020-00457; Index No. 153262/2017 · Decided October 1, 2020

SUMMARY

The Appellate Division, First Department reversed an order denying defendants' motion for summary judgment in a premises-liability action involving a staircase fall. The court held that the plaintiff's newly raised design-defect theory was insufficiently pleaded and that video evidence and testimony established the defendants' lack of negligence; the plaintiff's expert opinion did not raise a triable issue of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Oing, J.; Singh, J.; Mendez, J.
JURISDICTION	New York
DECIDED	October 1, 2020
DOCKET	Appeal No. 11904; Case No. 2020-00457; Index No. 153262/2017
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, New York County, denying their motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	The Appellate Division reviewed the denial of summary judgment and whether defendants established prima facie entitlement to judgment as a matter of law and plaintiff raised a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	East Harlem Tutorial Program, Inc., et al. v. Jadeen Minor

TOPICS

- premises liability
- summary judgment
- negligence
- pleadings
- expert testimony

PRACTICE AREAS

premises liability

personal injury

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiff's design-defect theory, raised for the first time in opposition to summary judgment, was sufficiently pleaded to avoid surprise or prejudice.
2. Whether defendants established prima facie that plaintiff's fall was not caused by negligence on their part.
3. Whether plaintiff's opposition raised a triable issue of fact through her expert's opinion.

HOLDINGS

1. Plaintiff's design-defect theory was a new theory not sufficiently pleaded and therefore could not be used to avoid summary judgment because it would cause surprise or prejudice.
2. Defendants established prima facie that plaintiff's fall was not caused by negligence on their part.
3. Plaintiff failed to raise an issue of fact because her expert's opinion was speculative and conclusory and therefore lacked probative value.

FACTUAL BACKGROUND

Plaintiff fell while descending a staircase in defendants' building. She alleged that a defective or unstable handrail caused the fall. Surveillance video and testimony showed that the handrail was stable, that plaintiff held it throughout her descent, and that she was distracted, missed a step, and lost her balance.

PROCEDURAL HISTORY

Supreme Court, New York County, denied defendants' motion for summary judgment. The Appellate Division unanimously reversed on the law, granted the motion, and directed the Clerk to enter judgment for defendants.

DISPOSITION

reversed

REMAND INSTRUCTIONS

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

CASES CITED

- Biondi v. Behrman, 149 A.D.3d 562, 563-564 (1st Dep't 2017), leave dismissed in part and denied in part, 30 N.Y.3d 1012 (2017)
- Burke v. Canyon Rd. Rest., 60 A.D.3d 558, 559 (1st Dep't 2009)
- Boatwright v. New York City Tr. Auth., 304 A.D.2d 421, 421 (1st Dep't 2003)

OPINION

PER CURIAM.

Minor v East Harlem Tutorial Program, Inc. (2020 NY Slip Op 05288) Minor v East Harlem Tutorial Program, Inc. 2020 NY Slip Op 05288 Decided on October 01, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: October 01, 2020 Before: Gische, J.P., Oing, Singh, Mendez, JJ. Index No. 153262/2017 Appeal No. 11904 Case No. 2020-00457 [*1]Jadeen Minor, Plaintiff-Respondent, vEast Harlem Tutorial Program, Inc., et al., Defendants-Appellants. Molod Spitz & DeSantis, P.C., New York (Marcy Sonneborn of counsel), for appellant. Michael J. Aviles & Associates, LLC, New York (Barbaba Hutter of counsel), for respondents.

Order, Supreme Court, New York County (Robert R. Reed, J.), entered on or about September 9, 2019, which denied defendants' motion for summary judgment dismissing the complaint, unanimously reversed, on the law, without costs, and the motion granted.

The Clerk is directed to enter judgment accordingly. The design defect raised in plaintiff's opposition to the motion was a new theory that was not sufficiently pleaded to avoid surprise or prejudice (see *Biondi v Behrman*, 149 AD3d 562, 563-564 [1st Dept 2017], lv dismissed in part and denied in part 30 NY3d 1012 [2017]). Regardless, defendants established prima facie that plaintiff's fall on a staircase in their building was not caused by negligence on their part (see e.g. *Burke v Canyon Rd.*

Rest., 60 AD3d 558, 559 [1st Dept 2009]). Video surveillance footage and testimony show that, contrary to plaintiff's allegations, the staircase handrail was stable and in any event did not contribute to her fall. The video does not show that the handrail was loose, wobbly, or shaky. Rather, it shows that, as she descended the stairwell, plaintiff was distracted, missed a step, and lost her balance, and that she was holding onto the handrail the whole time.

In opposition, plaintiff failed to raise an issue of fact. Her expert's opinion is speculative and conclusory and therefore without probative value (see e.g. *Boatwright v New York City Tr. Auth.*, 304 AD2d 421, 421 [1st Dept 2003]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: October 1, 2020