

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

Lomtevas v. City of New York

2021 NY Slip Op 06953 (App. Div. 2021) · No. Appeal No. 14828; Case No. 2020-02926; Index No. 450869/18
· Decided December 14, 2021

SUMMARY

The Appellate Division, First Department modified an order dismissing claims against the Port Authority of New York and New Jersey arising from a suicide from the George Washington Bridge. The court held that allegations concerning the Port Authority's failure to maintain the bridge's pedestrian walkway and install suicide barriers implicated a proprietary duty to maintain the property in a reasonably safe condition. The complaint was reinstated to the extent it alleged breach of that duty and otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Kennedy, J.; Scarpulla, J.; Mendez, J.; Shulman, J.
JURISDICTION	New York
DECIDED	December 14, 2021
DOCKET	Appeal No. 14828; Case No. 2020-02926; Index No. 450869/18
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed an order granting The Port Authority of New York and New Jersey's motion to dismiss the complaint and cross claims against it.
STANDARD OF REVIEW	Review of the legal sufficiency of the complaint and whether it states a cause of action.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Appellate Division, First Department.
PARTIES	Vera A. Lomtevas, individually and as administrator of the estate of Daniel Lomtevas v. The Port Authority of New York and New Jersey

TOPICS

premises liability

duty of care

negligence

municipal liability

appellate procedure

PRACTICE AREAS

torts

premises liability

municipal law

QUESTIONS PRESENTED

1. Whether the Port Authority's responsibility for maintaining the George Washington Bridge's pedestrian walkway and guardrail was a proprietary rather than governmental function.
2. Whether the complaint stated a cause of action by alleging that the Port Authority negligently failed to maintain the bridge in a reasonably safe condition by failing to install suicide barriers.

HOLDINGS

1. The Port Authority's responsibility for maintaining the guardrail on the George Washington Bridge's pedestrian walkway is a proprietary function rather than a governmental function.
2. The complaint stated a cause of action to the extent it alleged that the Port Authority, as property owner, negligently failed to maintain the George Washington Bridge in a reasonably safe condition by failing to install suicide barriers along the walkways.

KEY QUOTATIONS

"As in Feldman and Perlov, plaintiff states a cause of action by alleging that the Port Authority, as a property owner, "failed to maintain the GWB in a reasonably safe condition by negligently failing to install suicide barriers along the walkways to prevent suicides," thus presenting a foreseeable risk of harm in light of the allegations concerning the history of the George Washington Bridge's walkway as a place where frequent suicides occur."

FACTUAL BACKGROUND

The decedent died by suicide after jumping from the George Washington Bridge, which is owned and operated by The Port Authority of New York and New Jersey. The complaint alleged that the Port Authority negligently failed to install suicide barriers along the pedestrian walkways despite the history of the walkway as a place where frequent suicides occur.

PROCEDURAL HISTORY

The Supreme Court, New York County, granted the Port Authority's motion to dismiss the complaint and cross claims as against it. The Appellate Division unanimously modified the order by reinstating the complaint to the extent it alleged that the Port Authority breached a duty to maintain the George Washington Bridge in a reasonably safe condition, and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

The complaint against the Port Authority is reinstated only to the extent it alleges breach of a duty to maintain the George Washington Bridge in a reasonably safe condition; the order is otherwise affirmed.

CASES CITED

- Feldman v. Port Auth. of N.Y. & N.J., 194 A.D.3d 137 (1st Dep't 2021)
- Perlov v. Port Auth. of N.Y. & N.J., 189 A.D.3d 1624 (2d Dep't 2020)
- Wittorf v. City of New York, 23 N.Y.3d 473 (2014)
- Sebastian v. State of New York, 93 N.Y.2d 790 (1999)

OPINION

Lomtevas v. City of New York 2021 NY Slip Op 06953

PER CURIAM.

Lomtevas v City of New York (2021 NY Slip Op 06953) Lomtevas v City of New York 2021 NY Slip Op 06953 Decided on December 14, 2021 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: December 14, 2021 Before: Kern, J.P., Kennedy, Scarpulla, Mendez, Shulman, JJ. Index No. 450869/18 Appeal No. 14828 Case No. 2020-02926 [*1] Vera A. Lomtevas, Individually and as the Administrator of the Estate of Daniel Lomtevas, Plaintiff-Appellant, v The City of New York, et al., Defendants, The Port Authority of New York and New Jersey, Defendant-Respondent. Vera A. Lomtevas, appellant pro se. The Port Authority Law Department, New York (Karla Denalli of counsel), for respondent. Order, Supreme Court, New York County (Lisa A. Sokoloff, J.), entered October 22, 2019, which granted the motion of defendant The Port Authority of New York and New Jersey to dismiss the complaint and the cross claims as against it, unanimously modified, on the law, the complaint as against the Port Authority reinstated, to the extent that plaintiff alleges that the Port Authority breached its duty to maintain the George Washington Bridge in a reasonably safe condition, and otherwise affirmed, without costs. Plaintiff's decedent died by suicide when he jumped from the George Washington Bridge (GWB), which is owned and operated by the Port Authority. Contrary to the Port Authority's contention that the complaint is addressed to actions taken in its governmental capacity, both this Court and the Second Department have recently held, in cases involving similar facts, that the Port Authority's responsibility for maintaining the guardrail on the pedestrian walkway over the Bridge is a proprietary function rather than a governmental function (Feldman v Port Auth. of N.Y. and N.J., 194 AD3d 137, 141-142 [1st Dept 2021]; Perlov v Port Auth. of N.Y. and N.J., 189 AD3d 1624, 1627-1628 [2d Dept 2020]; see generally Wittorf v City of New York, 23 NY3d 473, 479 [2014]; Sebastian v State of New York, 93 NY2d 790, 793 [1999]). As in Feldman and Perlov, plaintiff states a cause of action by alleging that the Port Authority, as a property owner, "failed to maintain

the GWB in a reasonably safe condition by negligently failing to install suicide barriers along the walkways to prevent suicides," thus presenting a foreseeable risk of harm in light of the allegations concerning the history of the George Washington Bridge's walkway as a place where frequent suicides occur.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED:
December 14, 2021

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