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Municipal Law Update

February 7, 2018

Plaintiff Failed to Meet Burden of Proof in Opposing City's Motion for Summary Judgment

In Burke v. City of Rochester, (4th Dept. 2018), the plaintiff allegedly sustained injuries after stepping into a sinkhole in front of her home, which was covered with snow. A year prior to the accident, the City of Rochester performed a "lawn cut" in the area where the plaintiff allegedly fell. The plaintiff alleged that this work resulted in a defective condition. The trial court denied the City's motion for summary judgment.

On appeal, the Fourth Department reversed its finding that the City met its initial burden of proof by establishing it did not receive prior written notice of the alleged defect. With the burden of proof then shifting, the plaintiff failed to demonstrate that the City "affirmatively created the defect through an act of negligence...that immediately result[ed] in the existence of a dangerous condition." Although the Court recognized that the plaintiff submitted evidence demonstrating that the City may have created the sinkhole, she failed to establish that the depression "was present immediately after completion of the work." In light of the fact the affirmative negligence exception to the prior written rule "does not apply to conditions that develop over time" the complaint was dismissed.

City Lacked Prior Written Notice and Was Entitled to Summary Judgment

In Tracy v. City of Buffalo, (4th Dept. 2018), the plaintiff attributed the injuries she sustained following a motor vehicle accident to the presence of potholes. The trial court denied the City's motion for summary judgment. On appeal, the Fourth Department reversed the lower court since the City lacked prior written notice. Additionally, the plaintiff failed to demonstrate that an exception to the prior written notice rule applied. Further, the Appellate Division noted that "verbal or telephonic communication to a municipal body that is reduced to writing [does not] satisfy a prior written notice requirement" and dismissed the complaint.

Municipal Plaintiff Entitled to Jury Trial on Discount Rate of Damages Award

In Village of Herkimer v. County of Herkimer, (4th Dept. 2018), the Village of Herkimer was a former member of the Herkimer Self-Insurance Plan, which filed suit

against the County of Herkimer as the plan's administrator. The County moved for summary judgment dismissing the complaint and for summary judgment on its counterclaims. The lower court granted the motions and directed a hearing on damages, which the Fourth Department affirmed.

A jury awarded the County $1,617,528.00 in damages, to which the court added $833,580.87 in prejudgment interest. In a prior appeal, the Fourth Department affirmed the judgment, but the Court of Appeals modified the judgment and remitted the matter to the trial court for the purpose of establishing an appropriate discount rate. On remittitur, the trial court judge awarded a 1.8% discount and ordered that the County refund $363,521.07, which prompted the present appeal.

The Fourth Department concluded that the lower court erred in failing to empanel a jury to determine the discount rate. It was undisputed that prior to the original trial, the Village had demanded a jury trial on all issues. Despite the Village's objection, the jury was provided with a verdict form that did not permit any damages discount. Therefore, the Fourth Department remitted the matter to the lower court for a jury trial on the issue of determining an appropriate discount rate.

Case Remitted to Court of Claims to Determine Whether the Dangerous Condition Was a Proximate Cause of Decedent's Fatal Injuries

In Reames v. State of New York, et al (4th Dept. 2018), the plaintiff's decedent sustained fatal injuries while riding as a passenger when the driver crashed into "an out-of-commission bridge." There were four signs present advising of the bridge's closure. The first of four signs was encountered when the driver of the vehicle turned onto Stoney Creek Road. This sign was white and was five feet high with black lettering which read "BRIDGE CLOSED ¾ MILES AHEAD LOCAL TRAFFIC ONLY." The second sign was also on the right-hand side of the street, which was orange with black lettering which read "BRIDGE CLOSED 500 FT." The third sign crossed both lanes of the road, via a barricade and was about 89 feet before the bridge. This sign read "BRIDGE CLOSED." The last sign was located at the southern entrance of the bridge, which was a six-inch hollow steel box beam "with a small strip of orange and white diagonal reflective stripes across the middle."

The driver of the vehicle at issue drove past the first two signs and through the center of the third sign. Subsequently, the driver then proceeded "into and under the fourth sign". Due to the height of the steel beam box, the vehicle underrode the beam killing the driver instantly. The vehicle continued forward across the bridge striking a second steel box beam, which resulted in head injuries to the plaintiff's decedent resulting in his eventual death.

Following the conclusion of a nonjury trial, the Court of Claims held that the claimant failed to establish by a preponderance of the evidence that the defendants were negligent "when placing warning signs and barricades leading up to the closed bridge, or that such negligence, if established, was a proximate cause of the accident."

The Fourth Department agreed with the lower court in that the "signs and barricades leading north to the...Bridge on Stoney Creek Road were sufficient on the date of the accident for their intended purpose-to warn drivers that the [B]ridge was closed." Additionally, the Fourth Department upheld the lower court's conclusion that inadequate signage was not a proximate cause of the accident.

However, the Fourth Department determined that the trial court erred in its dismissal of the claim inasmuch as it alleged that the defendants created a dangerous condition, which was a proximate cause of the injuries. New York State "has an obligation to provide and maintain adequate and proper barriers along its highways." Therefore, the defendants decision to create a steel box beam across the front of the bridge at a sufficient height to allow a vehicle to proceed under it, "constituted the

creation of a dangerous condition as a matter of law."

Therefore, the Fourth Department remitted the case back to the Court of Claims to determine "whether [this] dangerous condition constituted a proximate cause of the decedent's fatal injuries."

City Not Entitled to Summary Judgment as They Failed to Meet Their Burden of Proof

In 2305 Genesee Street, LLC v. City of Utica, the plaintiff commenced an action alleging damage to real and personal property as a result of a drainage system overflowing. The City of Utica moved for summary judgment arguing that it was not negligent in maintaining its drainage system, but the damage was caused by an "act of God." The lower court granted summary judgment in favor of the City.

On appeal, however, the Fourth Department concluded that the City failed to meet its burden in light of the fact that its own moving papers created a question of fact on the issue of negligence. In its moving papers, the City admitted that a "trash rack" was located in the rear of the plaintiff's property, which was used to filter debris that was entering the drainage system from a nearby ravine. Further, if too much debris builds up in the "trash rack" it prevents water from flowing into the drainage system. The record also established that flooding had previously occurred at the premises causing property damage.

To prevent flooding, the City alleged that its employees would periodically inspect the ravine. To the contrary, a member of plaintiff's company testified that the City "rarely" inspected the "trash rack". Further, the Fourth Department held that the defendant failed to establish that "the storms and...flooding were the sole and immediate cause[s] of the injur[ies] and that [defendant was] free from any contributory negligence." Therefore, the Fourth Department reinstated the complaint.

Trial Court Erred in Vacating Jury's Damages Award

In Mecca v. Buffalo Niagara Convention Center Management, (4th Dept. 2018), plaintiffs commenced the underlying action for injuries Paige Mecca allegedly sustained as a result of having a tray of dishes dropped on her by one of defendant's employees. After a jury trial, the jury found defendant liable and awarded damages. Following the verdict, plaintiffs moved pursuant to CPLR §4404 to set aside the damages award for past and future pain and suffering, future lost wages and business profits and future medical expenses. Plaintiffs also sought a new trial on these categories of damages unless defendant stipulated to an increased amount. The lower court granted plaintiffs' motion and granted a new trial unless defendant stipulated to an increased award.

The Fourth Department held that the trial court abused its discretion in granting the motion and reinstated the jury's award. An award for personal injuries "is primarily a question for the jury..., the judgment of which is entitled to great deference based upon its evaluation of the evidence, including conflicting expert testimony." A jury is also free to reject an expert's opinion "if it finds the facts to be different from those which formed the basis for the opinion or if, after careful consideration of all the evidence in the case, it disagrees with the opinion."

Despite plaintiffs' medical evidence, the defense (led by Michael M. Chelus) set forth proof that the plaintiff had exaggerated her injuries. Therefore, upon a review of the record the Fourth Department concluded that there was no reason "to disturb the jury's resolution of these issues" and reinstated the jury's damages award.

If you have questions about these cases or any other municipal law issues, please do not hesitate to contact Michael J. Chmiel or Kevin E. Loftus.

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