

Quick HITTERS

New Jersey LEGAL UPDATES



Negligence—Premises Liability

Rickards v. Hess, No. A-2403-08T2 (N.J. Super. App. Div. Feb. 25, 2010) – Plaintiff sustained injuries from a fall on defendant's staircase. At trial, plaintiff moved for judgment on liability based upon defendant's negligent construction and failure to reasonably maintain and adequately inspect the staircase. The motion was denied and the jury returned a no cause verdict. Plaintiff moved for judgment notwithstanding the verdict (JNOV) which also was denied. Plaintiff appealed the denial of both motions. The Appellate Division found no error by the trial court in denying plaintiff's motions because there was sufficient evidence to allow the jury to find that defendant properly inspected and maintained her exterior staircase. Defendant testified and explained no one had ever previously fallen or slipped on the staircase. Moreover, neither defendant's handyman nor her tenant of fifty years

ever noted anyone falling or slipping on the staircase. The trial court motion decisions were accordingly affirmed.

Donohue v. Polozzo, Docket No. A-1853-08 (N. J. Super. App. Div., Nov. 09, 2009) - Plaintiff brought suit against her defendant-landlords after she fell on stairs at her rental property. Plaintiff claimed that the stairs were defective for lacking a handrail, though she used the stairs on a daily basis and never complained to the defendants about the lack of a handrail prior to her fall. The trial court granted summary judgment to the defendants on the basis that the claimed defect, i.e., the absence of a handrail, was patently obvious, and that there was no proof that the defendants had "fraudulently concealed" the absence of a handrail from plaintiff. The Appellate Division affirmed, noting that despite

Flis v. Mainco Elevator Co., No. A-4268-07T2 (N.J. Super. App. Div. Dec. 1, 2009) - Plaintiffs brought suit against defendant seeking damages for injuries sustained as a result of being trapped in an elevator that jerked up and down for over two hours. A jury verdict was entered in plaintiffs' favor. The defendant appealed, claiming that the verdict was exces-

Quick Hitters is published several times per year and is the sole property of Bennett, Bricklin & Saltzberg LLC with all rights reserved. The articles contained herein are for informational purposes only and are not intended as legal advice. Quick Hitters is provided free of charge. If you would like to be included in our mailing list, receive additional copies, subscribe via email or change your address, please contact the editors at 856.751.5285 or any member of the firm. © 2011

sive and against the weight of the evidence. The Appellate Division disagreed and affirmed the jury's award. The Appellate Division noted that although there were factual disputes regarding the extent of various aspects of the plaintiffs' injuries, the jury was presented with sufficient medical and psychological evidence of the plaintiffs' injuries and

defendants' oversights in not having their rental property registered, inspected, and in conformity with code requirements, such oversights were irrelevant given the patency of the claimed defect.

Gordon v. Daftani, No. A-1138-08 (N. J. Super. App. Div. Sept. 29, 2009) – In the course of making a delivery to defendant's restaurant, plaintiff fell on "soap, grease, or some other slippery substance" present on an entrance ramp. The defendant restaurant owner claimed that he washed down the entrance ramp prior to plaintiff's fall and that the ramp required daily sweeping and frequent washing because of debris tracked in as a result of deliveries, everyday use, and the fact that the adjoining property owners were not "clean people." The trial court granted defendant's motion for summary judgment on the basis that defendants did not have actual or constructive notice of the alleged hazardous condition of the slippery ramp. However, the Appellate Division reversed and re-

manded the matter to trial. The Appellate Division found that restaurant owner's cleaning of the ramp prior to plaintiff's fall created a genuine issue of material fact. Further, the Appellate Division found that the defendants may have had constructive notice that the ramp had a dangerous condition given the potential that soapy water or debris would remain on the area where plaintiff fell in spite of efforts to clean it.

Bennett v. Lounge, No. A-5215-08 (N. J. Super. App. Div. Jan. 25, 2010) – Plaintiff sustained injuries when he fell off a chair while assisting in hanging a banner in defendant's tavern. Plaintiff claimed that he was a business invitee at the time of the accident, and that the defendant tavern employee failed to inspect the chair for defects or warn plaintiff of the chair's dangerous condition before he stood on it.



Damages

Bennett v. Lounge, No. A-5215-08 (N. J. Super. App. Div. Jan. 25, 2010) – Plaintiff sustained injuries when he fell off a chair while assisting in hanging a banner in defendant's tavern. Plaintiff claimed that he was a business invitee at the time of the accident, and that the defendant tavern employee failed to inspect the chair for defects or warn plaintiff of the chair's dangerous condition before he stood on it.

WWW.BBS-LAW.COM

EDITORS

Michael Dolich, Esquire
dolich@bbs-law.com

Michael A. Weiner, Esquire
weiner@bbs-law.com

Michael B. Gerstein, Esquire
gerstein@bbs-law.com

COPY EDITOR

Lesa M. DeCarlo
decarlo@bbs-law.com

Winter/Spring Edition 2011



Tort Claims Act – Notice

McDade v. Siazon, No. A-4407-08 (N. J. Super. App. Div. Dec. 08, 2009) – On January 22, 2006, plaintiff was injured while walking his dog when he tripped and fell on a pipe protruding from a sidewalk. He forwarded notices of tort claim to Egg Harbor Township, Atlantic County, and the State of New Jersey in reply to which the township notified him that the subject pipe was under the jurisdiction of the Egg Harbor Township Municipal Utilities Authority ("MUA"). On August 22, 2006, plaintiff's counsel provided the MUA with a copy of the notice of claim previously sent to the other defendants. The MUA moved for summary judgment on the basis that plaintiff's claims against it failed because he did not serve a notice of claim upon it within ninety days of the accrual date of January 22, 2006, as required by N.J.S.A. 59:8-8(a), or obtain leave of court to file a late notice of claim pursuant to N.J.S.A. 59:8-9. The trial court denied the motion after applying the discovery rule determining that plaintiff's claims against the MUA did not accrue on January 22, 2006, when plaintiff fell, but on August 21, 2006, when plaintiffs learned that the pipe in question was "actually owned" by the MUA. The Appellate Division reversed the trial court, noting that the trial court improperly disregarded plaintiff's lack of investigation into who was responsible for the pipe. The Appellate Division found that the actual ownership of the pipe could have been determined promptly and with little effort.

The Appellate Division affirmed the trial court's grant of summary judgment to defendant, dismissing plaintiff's action due to lack of evidence, by expert testimony or otherwise, that a reasonable inspection of the chair prior to the accident would have revealed the chair's defect. The Appellate Division agreed with the trial court's reasoning that absent such proof, plaintiff failed to prove that defendants had actual or constructive notice of the chair's defect.

trauma, in addition to testimony regarding lost wages and loss of household services, to adequately support the verdict.

Bennett
Bricklin &
Saltzberg
LLC

PENNSYLVANIA · NEW JERSEY · NEW YORK

WWW.BBS-LAW.COM



Punitive Damages—Intoxication

Ricca v. Cravello, No. A-1949-08 (N. J. Super. App. Div. Feb. 22, 2010) – Defendant’s vehicle veered into another vehicle then collided with plaintiff’s vehicle that was stopped for a red light. After the accident, defendant was taken to a hospital for a head injury. He admitted to drinking and a breathalyzer test administered two hours after the accident revealed a blood alcohol concentration of .06%. Defendant conceded liability and trial proceeded on damages, including one of the plaintiff’s claims for punitive damages under the Punitive Damages Act, N.J.S.A. 2A:15-5-9 to -5.17. On appeal, defendant claimed that the trial court erred by allowing the

issue of punitive damages to be presented to the jury. The Appellate Division agreed with defendant and held that although there was evidence that plaintiff was intoxicated while driving, this alone was insufficient to warrant the imposition of punitive damages. The only additional aggravating factors presented to the jury were evidence defendant had been traveling above the speed limit and passing on the right. The Appellate Division found that these factors were common traffic violations that did not make defendant’s conduct sufficiently willful and beyond gross negligence as required for such damages under the Act.

Charitable Immunity

Orzech v. Fairleigh Dickinson University, 411 N.J. Super. 198 (App. Div. 2009) - Plaintiff’s filed a wrongful death action against the defendant-university after their son, a student and resident advisor at the university, fell to his death from his fourth floor dormitory window while intoxicated. Defendant claimed immunity under the Charitable Immunity Act, which states that nonprofit organizations formed exclusively for religious, charitable, educational or hospital purposes cannot be sued by those who are benefitting from those services unless the organization is guilty of gross negligence. The trial court denied defendant’s claim of immunity and

awarded damages to plaintiffs after finding defendant negligent. Defendant appealed and the Appellate Division reversed the trial court’s finding that the Charitable Immunity Act did not apply. The Appellate Division concluded that plaintiff’s son was a beneficiary of the university by virtue of his living in a dormitory and that his beneficiary status was not altered by plaintiff’s intoxication at the time of his fall. The Appellate Division further held that the negligence committed by the university in either not having in place an adequate alcohol policy for its students or not adequately enforcing the policy did not constitute gross negligence.

Insurance Coverage—Intentional Acts

D.R. v. Allstate Ins. Co., No. A-0180-08 (N. J. Super. App. Div. Jan. 27, 2010) – Plaintiff sought defense and indemnity from defendant-insurer after she was sued for damages arising from her minor son’s alleged molestation of a child who attended the day-care center she operated out of her home. The trial court granted the insurer summary judgment on the basis that intentional acts were excluded under the policy. The Appellate Division reversed. Although acknowledging that the insurance policy in question excluded coverage for the insured’s

own intentional acts, it was a stipulated fact that the insured had no reason to anticipate that her son would molest the underlying plaintiff. The court therefore ruled that from the standpoint of the insured, she neither expected nor intended the injury to the underlying plaintiff. Accordingly, the court ruled that the complained of conduct fell within the definition of an accidental occurrence and the insured was therefore entitled to coverage under the insurance policy.

Damages

Kozma v. Starbucks Coffee Co., 412 N.J. Super. 319, 990 A. 2d 679 (App. Div. 2010) – Plaintiff brought an action against the shop, premises owner, and maintenance contractor when he fell on ice in front of defendant’s coffee shop. At trial, the jury heard evidence that plaintiff, a fifty year old contractor, suffered a previous work-related injury to his knee in 1997. After this fall, plaintiff had knee surgery on both of his knees. His knees also required either aspiration or injection with therapeutic fluids. However, the jury heard that plaintiff was able to go on a fifteen-hour automobile trip to Florida, went on other trips to the Poconos, and on one occasion, played two consecutive eighteen-hole rounds of golf. The jury found the coffee shop 60% liable and plaintiff 40% liable but awarded him no compensatory damages. The trial court denied plaintiff’s motion for a new trial and for additur. The Appellate Division affirmed noting that the jury’s damages assessment was entitled to a presumption of correctness and that the jury was free to conclude either that the plaintiff’s complaints about his knees stemmed from his legacy of knee issues, or that the fall at the coffee shop was inconsequential in affecting his lifestyle and quotient of pain and suffering.

Law Against Discrimination

Stoecker v. North Hudson Regional Fire & Rescue, No. A-0337-08T1 (N.J. Super. App. Div. Nov. 6, 2009) – Following his suspension from his job, plaintiff, a firefighter, brought hostile work environment and retaliatory discharge claims against defendant, his employer, under the New Jersey Law Against Discrimination (NJLAD). The trial court entered summary judgment for defendant and dismissed plaintiff’s complaint. Plaintiff appealed the dismissal of his retaliatory discharge claim on the basis that he was disciplined and discharged from his job for activity that was protected under the NJLAD. He claimed that his discharge was due to the complaints he made about his supervisor’s sexual harassment and his refusal to submit to a drug test. The Appellate Division disagreed and affirmed the trial court. The Appellate Division noted that while the plaintiff may have engaged in protected activity, there was no evidence that his participation in this protected activity resulted in adverse actions taken against him, as required for a retaliation claim under the NJLAD. Plaintiff’s discipline was instead due to his violations of his employer’s rules and regulations, acts of insubordination and disrespect for officers or for refusal to submit to a psychological examination.

2011 New Jersey Insurance Defense Symposium:

Wednesday, May 11, 2011

East Windsor, New Jersey

Register online: <http://www.bbs-law.com/webregistration.html>

Register via phone to: Beth Jarrett at (215) 665-3369