

**Roros v Oliva**

2007 NY Slip Op 30117(U)

February 26, 2007

Supreme Court, Suffolk County

Docket Number: 0002135

Judge: Paul J. Baisley

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SUPREME COURT - STATE OF NEW YORK  
CALENDAR CONTROL PART - SUFFOLK COUNTY

**PRESENT:**

**HON. PAUL J. BAISLEY, JR., J.S.C.**

-----X  
CARMELA ROROS and NICHOLAS RORAS,

Plaintiffs,

-against-

COLLEEN OLIVA and MICHAEL OLIVA,

Defendants.

-----X

**PLAINTIFFS' ATTORNEY:**

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**DEFENDANTS' ATTORNEY:**

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Upon the following papers numbered 1 to 20 read on this motion for summary judgment; Notice of Motion and supporting papers 1-10; Answering Affidavits and supporting papers 11-18; Replying Affidavits and supporting papers 19-20; it is,

**ORDERED** that this motion by the defendants for summary judgment dismissing the complaint is considered under CPLR 3212 and is granted.

While a guest for the first time at defendants' home, plaintiff fell when she was walking from a hallway into defendants' sunken living room on the way to the kitchen. Plaintiff was looking ahead and did not notice the difference in elevation between the rooms. She fell on the single step descending into the living room. Plaintiff states that due to the identical nature of the surfaces between the rooms, the step was camouflaged and not obvious; that there was no other visual clue to indicate the different elevations; and that the step did not provide a safe descent and therefore violated the New York State Building Code.

A landowner has no duty to warn of conditions that are not inherently dangerous and that are readily observable by the reasonable use of one's senses (*Cupo v. Karfunkel*, 1 A.D.3d 48, 767 N.Y.S.2d 40). Plaintiffs argue that an optical illusion was created by the consistency of color and

texture making the step or riser inherently dangerous and therefore defendants breached their duty to maintain the step in a reasonably safe manner. A single step riser which is legally constructed is not inherently dangerous (*Pirie v. Krasinski*, 18 A.D.3d 848, 796 N.Y.S.2d 671). Here there are no allegations that the lighting was inadequate, the surface unsafe or that the step was not legally built. Plaintiff's expert states that a single step or riser constructed prior to May 2002 in a single family home did not require a handrail. He states that the step violated the New York State building code because it was not uniform in height across its length and exceeded a 7 inch maximum height. However there is no indication as to how such a violation may have contributed to the accident (*Murray v. Dockside 500 Marina, Inc.*, 32 A.D.3d 832, 821 N.Y.S.2d 608). His conclusion that there was an optical illusion is speculative.

Accordingly, the court finds that the defendants have met their prima facie burden that the step was not inherently dangerous and was readily observable. Plaintiffs fail to raise an issue of fact to show that this particular step was unsafe. The motion is granted and the complaint is dismissed.

Date: February 26, 2007

**HON. PAUL J. BAISLEY, JR.**  
**J.S.C.**

  X   FINAL DISPOSITION           NON-FINAL DISPOSITION