

<b>Guidry v Newburgh Enlarged City Sch. Dist.</b>
2019 NY Slip Op 34295(U)
June 5, 2019
Supreme Court, Orange County
Docket Number: Index No. EF008264-2016
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
JUNE GUIDRY,

Plaintiff,

-against-

NEWBURGH ENLARGED CITY SCHOOL DISTRICT  
and THE CITY OF NEWBURGH,

Defendants.

-----X

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry upon all parties.

Index No. EF008264-2016  
Motion Date: May 7, 2019

The following papers numbered 1 to 4 were read on the motion of defendant Newburgh Enlarged City School District for summary judgment:

Notice of Motion - Affirmation in Support / Exhibits .....	1-2
Affirmation in Opposition / Exhibits .....	3
Reply Affirmation / Exhibits .....	4

This is an action for personal injuries sustained by plaintiff June Guidry when she fell on the afternoon of May 20, 2016 on a sidewalk located at the South Middle School on Monument Street in Newburgh, New York. Defendant Newburgh Enlarged City School District (the "School District") moves for summary judgment on the purported grounds that Plaintiff cannot identify what caused her to fall and has not established that the School District had notice of the defective condition of the sidewalk.

In a slip-and-fall case, a defendant may establish prima facie entitlement to judgment as a matter of law by submitting evidence that a plaintiff is unable to identify the cause of his or her fall (see *Patrick v. Costco Wholesale Corp.*, 77 AD3d 810, 811...; *Teplitskaya v. 3096 Owners Corp.*, 289 AD2d 477, 477–478...). This is because, in such a case, a finding of negligence would be based upon speculation (see *Patrick v. Costco Wholesale Corp.*, 77 AD3d at 810...; *Teplitskaya v. 3096 Owners Corp.*, 289 AD2d at 477–478...). That does not mean that a plaintiff must have personal knowledge of the cause of his or her fall. Rather, it means only that a plaintiff's inability to establish the cause of his or fall – whether by personal knowledge or by other admissible proof – is fatal to a cause of action based on negligence (see *Morgan v. Windham Realty, LLC*, 68 AD3d 828, 829...; cf. *Stock v. Otis El. Co.*, 52 AD3d 816, 817...; *Stanojevic v. Scotto Bros. Rest. Enters., Inc.*, 16 AD3d 575, 576...).

*Izaguirre v. New York City Transit Authority*, 106 AD3d 878 (2d Dept 2013) (emphasis added).

See also, *Ash v. City of New York*, 109 AD3d 854, 855 (2d Dept. 2013); *McFadden v. 726*

*Liberty Corp.*, 89 AD3d 1067 (2d Dept. 2011).

The key question is whether it may reasonably be inferred from admissible evidence that the plaintiff's accident was proximately caused by a defective condition for which the defendant bears responsibility, or, whether the defect was simply one of multiple possible causes such that the plaintiff's claim is impermissibly founded on speculation:

“Proximate cause may be established without direct evidence of causation by inference from the circumstances of the accident. However, mere speculation as to the cause of an accident, when there could have been many possible causes, is fatal to a cause of action” (*Vojvodic v. City of New York*, 148 AD3d 1086, 1087...[cit.om.]).

*Eisenstein v. Block 5298, Inc.*, 164 AD3d 1304, 1305 (2d Dept. 2018).

Plaintiff identified the location of her fall in a photograph depicting a raised sidewalk slab that appears to constitute a substantial tripping hazard. She testified that she was walking on the sidewalk toward the raised slab (i.e., in a direction such that her foot could come into contact with the raised portion of the slab). She further testified:

Q At some point did you fall on that sidewalk area ?

A Yes.

Q And was it while you were still walking in that same direction ?

A Yes.

Q And what caused you to fall ?

A I don't know. I felt myself going forward and it happened so fast, I don't know.

....

Q At any point did you feel either one of your feet make contact with something before you fell ?

A Yes.

Q If you remember.

A I believe I remember like I was tripping and just going forward but like I say it happened so fast.

Q Do you know if it was your right foot or left foot that made contact with something ?

A I don't remember.

Q Did you fall forward, did you fall to the right, to the left, behind you, something else ?

A I fell forward.

Plaintiff's evidence, if credited, is consistent in multiple respects with the thesis that she tripped over the raised slab and did not simply lose her balance or fall for some other reason unrelated to that defect.

- (1) Plaintiff's fall occurred at the situs of the raised sidewalk slab.
- (2) Plaintiff was walking in a direction such that her foot could have come into contact with the raised portion of the slab.

- (3) Plaintiff explicitly testified that one of her feet in fact made contact with something before she fell.
- (4) Plaintiff fell forward, which is consistent with her having tripped over the raised slab.

The School District stresses Plaintiff's frank admission that she did not know what caused her to fall. It is hardly surprising in the circumstances present here that Plaintiff was unable to say precisely what had caused her to fall. Not only was the accident wholly unexpected, it resulted immediately in such copious bloodshed that Plaintiff was in no condition post-accident to consider the cause of her fall. However, as the afore-cited caselaw makes clear, an injured plaintiff need not have personal knowledge as to what caused her accident provided that admissible evidence sufficiently establishes the cause of the fall. *See, Izaguirre v. New York City Transit Authority, supra; Eisenstein v. Block 5298, Inc., supra.*

In the Court's view, the evidence here – specifically, the location of the accident, the direction in which Plaintiff was ambulating, her sensation that her foot came into contact with something, and her falling forward – permits a reasonable inference that Plaintiff's accident was in fact caused by the defective sidewalk slab and not by mere loss of balance or some other cause unrelated to Defendant's alleged negligence. Other considerations raised by Defendant go to Plaintiff's credibility and not to the *prima facie* sufficiency of her common law negligence claim.

On the issue of notice, Defendant has not even attempted to establish *prima facie* that it lacked constructive notice of the sidewalk defect at issue here.

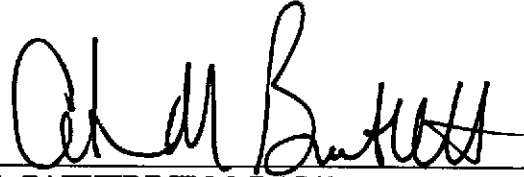
It is therefore

ORDERED, that the motion of defendant Newburgh Enlarged City School District for summary judgment is denied.

The foregoing constitutes the decision and order of the court.

Dated: June 5, 2019  
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT  
JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE