

Seegers v Village of Mineola

2020 NY Slip Op 34403(U)

November 6, 2020

Supreme Court, Nassau County

Docket Number: 604776/14

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

**PRESENT: Honorable James P. McCormack
Justice of the Supreme Court**

_____ x

**TRIAL/IAS, PART 18
NASSAU COUNTY**

EVA SEEGERs ad HENRY SEEGERs,

Plaintiff(s),

Index No. 604776/14

-against-

VILLAGE OF MINEOLA,

Defendant(s),

_____ x

The following papers read on this motion:

Motions in Limine/Supporting Exhibits.....XX
Opposition to Motions in Limine/Supporting Exhibits.....XX

In the first motion in limine, Defendant, the Village of Mineola (the Village), moves this court to preclude Plaintiffs' expert in property management and snow removal from testifying in this matter. The Village further moves to preclude any testimony about an alleged phone call made to the Village complaining about the condition of the subject parking lot, and to preclude testimony about weather conditions prior to February 13. In the second motion in limine, the Village offers further support for its first motion seeking to prevent Plaintiffs' snow removal expert from testifying at trial. Plaintiffs, Eva Seggers

and Henry Seegers oppose both motions.¹

Regarding the snow removal expert, John Allin, the Village's motion is twofold. The Village first argues that Mr. Allin's testimony in general is not relevant to these proceedings, and, secondly, to the extent he is allowed to testify, he should not be allowed to refer to industry standard guidelines promulgated by the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM). The court agrees with the Village that Mr. Allin should be precluded from making reference to these non-mandatory standards that are, at best, suggested standards. (*Miller v. Kings Park Cent. School Dist.*, 54 AD3d 314 [2d Dept 2008]; *Gonzalez v. City of New York*, 109 AD3d 510 [2d Dept 2013]).

As for Mr. Allin being allowed to testify at all, the Village relies heavily upon *Nevins v. Great Atl. & Pac. Tea Co.*, 164 AD2d 807 (1990). In *Nevins*, a woman slipped on ice in front of a store in Manhattan. Two employees had testified about their custom and practice of shoveling the front of the store after a snowfall. At trial, the plaintiff was allowed to offer the testimony of an engineer, who testified to the "custom and practice of removing snow in New York City". *Id.* The expert opined that snow should be removed within an hour and that no accumulation should exist on the sidewalk. *Id.* The First Department held that the expert should not have been allowed to testify, holding that the removal of snow and ice is not a subject that requires expert testimony and is not beyond

¹On November 5, 2020, the court held oral arguments, via Teams, on both motions. The arguments made therein were considered in rendering this decision.

the common knowledge of the typical juror. *Id.* This court finds the reliance on *Nevins* misplaced. This court agrees with the holding of *Nevins*- that an expert is not needed to explain how to shovel a sidewalk in front of a store. Further, the expert's testimony conflicted with well-settled law regarding a landowner's responsibility to clear snow after a snow storm.

Herein, the issue concerns a professional removing snow from an municipal parking lot. Unlike in *Nevins*, the issues here involve the manner in which snow was placed into piles, and the placement of those piles, and whether those activities were an affirmative act of negligence on part of the Village. As such, Mr. Allin will be allowed to testify as to the custom and practice of snow removal professionals in clearing snow under similar circumstances.

The court agrees with the Village that any testimony regarding the conditions of the parking lot prior to February 13 would be irrelevant to the issues involved in this case.

The court further finds that any testimony or reference to a complaint made to the Village by phone would also be irrelevant. Notice is not at issue, and the time of the alleged phone call was too remote from the date of the accident to be considered relevant evidence.

Accordingly, it is hereby

ORDERED, that Mr. Allin may testify about the custom and practice of snow removal professionals operating in similar circumstances to the facts herein, but may not

testify about or reference any nonmandatory industry guidelines, standards or suggestions including the ANSI and ATSM; and it is further

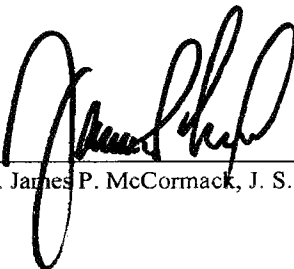
ORDERED, that Plaintiffs are precluded from offering weather-related testimony regarding conditions prior to February 13; and it is further

ORDERED, that Plaintiffs are precluded from offering evidence regarding an alleged complaint made to the Village by phone about the conditions of the parking lot two weeks prior to the accident.

This constitutes the Decision and Order of the Court.

Dated: November 6, 2020
Mineola, N.Y.

ENTERED
Nov 10 2020
NASSAU COUNTY
COUNTY CLERK'S OFFICE



Hon. James P. McCormack, J. S. C.