

Juan Quezada v. 1993 Kesef Realty, Inc.
Supreme Court, Bronx County
November 21, 2008

Jury Verdict In Favor Of Defendant on Liability

Plaintiff, a tenant in the building, alleged that while traversing the lobby in the building located at 155 West 162nd Street, Bronx, New York, he slipped and fell due to an accumulation of water on the floor three feet in front of the door to the superintendent's apartment. The incident occurred on December 17, 2003. The plaintiff alleged that the landlord had constructive notice of the condition as it failed to remediate recurrent leaks in the lobby for over ten years. During discovery plaintiff further alleged that another tenant slipped and fell approximately one year before on a similar condition.

At trial we were able to limit the plaintiff's testimony regarding prior leaks to 18 months, and we successfully precluded the plaintiff from testifying about the prior accident as plaintiff admitted that the landlord did not have notice of the accident and by the time he informed us of the accident at his deposition the tenant who fell had since passed away, precluding us from investigating the facts surrounding that accident.

The building superintendent testified at trial that he had made a repair to a portion of the lobby ceiling at or about the time of the accident, and that shortly after the accident the plaintiff told him that he fell in front of the rear elevator.

As a result of the fall the plaintiff sustained a comminuted fracture of the distal portion of the humerus and multiple linear non-displaced fractures in the proximal third of the humerus. The plaintiff was transported by ambulance and treated in the Emergency Department at Lincoln Hospital. Thereafter he received treatment with Lincoln Hospital orthopedics outpatient clinic on five occasions with his last visit on March 12, 2004. According to plaintiff's orthopedic expert, Dr. Jeffrey Kaplan, the fracture healed with an 11 degree angulation. Dr. Kaplan further testified that due to his lack of use of his shoulder, the plaintiff developed adhesive capsulitis which has progressively limited his range of motion. The plaintiff was referred to Dr. Kaplan by his counsel. Dr. Kaplan first examined the plaintiff on January 30, 2006, more than two years after the accident. Plaintiff was then examined by Dr. Kaplan on October 17, 2006 and March 20, 2008. These three examinations performed by Dr. Kaplan was the only "treatment" the plaintiff received following his discharge from Lincoln Hospital's care.

During the trial, we were able to raise a number of inconsistencies between the plaintiff's trial testimony and his deposition, as well as an inconsistency with the information he provided to EMS who transported him to the hospital, to place plaintiff's credibility in issue.

At the close of trial, on November 21, 2008 the Bronx jury rendered a verdict in favor of the defendant.

Gail Ritzert represented the defendant.

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