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Pulver v. City of Fulton Dept. of Public Works

Supreme Court, Appellate Division, Fourth Department, New York - January 3, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 00004

Plaintiff brought personal injury action against city, seeking damages for injuries incurred when she tripped and fell in hole in grassy area between curb and paved portion of sidewalk.

The Supreme Court, Appellate Division, held that:

- Grassy area between curb and paved portion of sidewalk where pedestrian allegedly tripped and fell in hole was part of sidewalk, and thus city's prior written notice requirement applied, and
- Affirmative negligence exception to city's prior written notice requirement did not apply.

Evidence that plaintiff had submitted a preaccident "work order" to the city relating to hole in grassy area between curb and paved portion of sidewalk was insufficient to establish that affirmative negligence exception to city's written notice requirement applied, where, in response to the "work order," city dispatched an employee who testified that he inspected the area, found nothing wrong with it, and performed no work, and there was no evidence that city placed plywood, on which pedestrian tripped, over hole.