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Benson v. City of Tonawanda

Supreme Court, Appellate Division, Fourth Department, New York - February 14, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 01056

Pedestrian brought action against city seeking damages for injuries she sustained when her foot was caught in a gap between two wooden planks on a pedestrian bridge located within a park maintained by city. The Supreme Court, Erie County, granted summary judgment to city. Pedestrian appealed.

The Supreme Court, Appellate Division, held that triable issue of fact, precluding summary judgment, existed as to whether city affirmatively created dangerous condition.

Triable issue of fact existed as to whether city affirmatively created dangerous condition by constructing pedestrian bridge with half-inch gaps between the wooden planks instead of the quarter-inch gaps specified in the design plans for the bridge, precluding summary judgment in pedestrian's action against city seeking damages for injuries she sustained when her foot was caught in the gap between planks on the bridge, which was located within a park maintained by city.