

Bond Case Briefs

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LIABILITY - NEW YORK

In re Paula D.

Supreme Court, Appellate Division, First Department, New York - March 6, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 01523

Infant plaintiff who was injured after being struck by vehicle brought personal injury action against city, construction companies, and others, alleging construction enclosure on city's property blocked her view of intersection. Defendants moved for summary judgment. The Supreme Court, Bronx County, granted motions in part and denied motions in part. Parties cross-appealed.

The Supreme Court, Appellate Division, held that:

- Triable issue of fact existed as to whether plaintiff's failure to observe the vehicle that struck her was a foreseeable consequence of construction enclosure;
- Triable issue of fact existed as to whether contractor responsible for designing and creating a construction enclosure unleashed a force of harm, such that it was not entitled to rely upon municipally approved plans or its status as an independent contractor;
- Triable issue of fact as to whether construction enclosure followed approved plans, and whether it should have been recognized it as unsafe; and
- City did not owe plaintiff a special duty.

City's nondelegable duty, as owner of property upon which construction enclosure that allegedly blocked infant plaintiff's view of vehicle that struck her at intersection was located, was not triggered, where defect was in the construction structure, not the roadway or sidewalk.