

Bond Case Briefs

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LIABILITY - NEW YORK

Fleisher v. City of New York

Supreme Court, Appellate Division, Second Department, New York - September 24, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06297

Pedestrian, and her husband suing derivatively, commenced action against city to recover damages for injuries allegedly sustained when she fell on sidewalk. The Supreme Court, Kings County, entered judgment as matter of law in city's favor, and plaintiffs appealed.

The Supreme Court, Appellate Division, held that:

- Map prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc. and filed with New York City Department of Transportation (DOT) was admissible to show city's prior notice of alleged defect, and
- Court improvidently exercised its discretion in precluding plaintiffs from presenting evidence that injured plaintiff acquired "C-difficile" infection, her pre-existing Crohn's disease was exacerbated, and she suffered psychological injury.

Map prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc. and filed with New York City Department of Transportation (DOT) was relevant to issue of whether city had prior written notice of claimed defect in sidewalk that allegedly caused injured plaintiff to fall, and thus was admissible in personal injury action against city, where plaintiffs sought to admit map for nonhearsay purpose of establishing that city had notice of alleged defect at least 15 days prior to injured plaintiff's accident.

Trial court improvidently exercised its discretion in personal injury action in precluding plaintiffs from presenting evidence that, as result of accident, injured plaintiff acquired "C-difficile" infection, her pre-existing Crohn's disease was exacerbated, and she suffered psychological injury on ground that plaintiffs' expert disclosure failed to include substance of facts and opinions upon which he was expected to testify, where expert did state basis of his opinions, albeit tersely.