

Mets Ownership Gets Court Victory in Stadium Dispute By Carla Varriale of Havkins, Rosenfeld, Ritzert & Varriale

A New York state court has granted the Sterling Mets, L.P. and the City of New York's motion for summary judgment in a case where a plaintiff, Larry Rooney, alleged that he sustained personal injuries when he fell as he stepped off an allegedly defective curb near a parking lot outside of Shea Stadium.

He alleged specifically that Sterling and the City were negligent in their ownership, operation, maintenance and control of Shea Stadium and the subject curb.

Sterling and the City moved for summary judgment to dismiss the plaintiffs' complaint on the following grounds: (1) the alleged condition was trivial in nature; (2) they did not create or have notice of the condition; and (3) there was no written notification of the alleged defect.

Although the court noted that the question of whether a defect was trivial or whether it is a dangerous condition is generally a question of fact for the jury, it stated that "[a] trivial defect on a walkway, not constituting a trap or nuisance, as a consequence of which a pedestrian might merely stumble, stub his toes, or trip on a raised projection is not actionable." (citations omitted). Based on the evidence submitted by Sterling and the City, the court held that the alleged condition was trivial in nature and thus not actionable. In coming to her decision, Justice Flug relied upon the determination by Sterling and the City's expert engineer that the missing piece of curb was three inches wide and three quarters of an inch deep, the photographs of the condition which depicted that it was not obscured from plaintiff's vision especially in light of the fact that it was painted orange.

The court also concluded that there was no evidence that Sterling or the City created the condition concerning the missing piece of curb or had actual or constructive notice of the condition. Also, the City could not face liability for the condition because it had no prior written notification of the curb condition, a condition precedent to maintain an action against the City pursuant to the City of New York Administrative Code §7-201(c). Sterling and the City submitted a copy of the Big Apple Pothole Sidewalk Protection Corporation Map for the general area outside Shea Stadium before the date of the alleged accident that showed that there were no recorded defects outside the Stadium.

In addition, the court found that there was only speculation that the missing piece of curb caused the plaintiff's accident. The plaintiff admitted that he did not notice the missing piece of curb until he got off the ground five minutes after he fell and looked around to determine what caused him to fall, admitted that he was overweight, had an asthmatic condition and sometimes had difficulty walking. The court stated that "[u]nder these circumstances, where there are several equally plausible explanations for the accident, and no competent admissible proof, only speculation, as to the cause of the accident, defendants' motion for summary judgment is properly granted." (citations omitted).

The court rejected the affidavit of the plaintiffs' purported engineering expert because the plaintiffs did not identify their expert during pre-trial disclosure and only did so after they filed their Note of Issue, certifying that all discovery was completed. The court also stated that the affidavit of the plaintiffs' engineering expert did not create a question of fact because he inspected the curb approximately two years after the date of the alleged accident and because the photographs the expert relied upon did not depict the missing piece of curb was "over one inch" as claimed by the plaintiffs.

Larry Rooney v. Sterling Mets, L.P. and The City of New York; Supreme Court of the State of New York, Queens County; Index Number 5583/06; 1/28/08

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