

November 20, 2007 - - M&H Wins Modification of Appellate Division Order by New York State Court of Appeals

Corsino v. New York City Transit Authority, 9 NY3d 978 (2007)

In this personal injury action, M&H obtains a modification of the order of Appellate Division, First Judicial Department, which had granted the Defendants' motion for summary judgment and dismissed the Plaintiffs' complaint. As a result, the dismissed case was resurrected and M&H's clients were able to proceed to trial against the Defendants.

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This memorandum is uncorrected and subject to revision before publication in the New York Reports.

1 No. 182 SSM 29
Cordelia A. Corsino, et al.,
Appellants,
v.
New York City Transit Authority,
et al.,
Respondents.

Submitted by Scott T. Horn, for appellants.
Submitted by Peter J. Morris, for respondents New York City Transit Authority, et al.
Submitted by Oliver W. Williams, for respondent Villafane Electric Corp.

MEMORANDUM:
The Appellate Division order should be modified, with costs to plaintiffs against defendants New York City Transit Authority, CAB Associates and Villafane Electric Corp. by denying the motions for summary judgment by these defendants and, as so

- 2 - SSM No. 29
- 2 -

modified, affirmed, with costs to defendant Sheldon Electric Company, Inc. against plaintiffs.
Except as to defendant Sheldon Electric Company, Inc., we agree with Supreme Court and the dissenting Justices at the

Appellate Division that triable issues of fact exist as to whether the hazardous condition that caused the injured plaintiff's fall was the result of negligence (see Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Derdiarian v Felix Contr. Corp., 51 NY2d 308, 315 [1980]) and as to whether the owner and contractor defendants exercised the requisite supervisory or safety control over defendant Villafane Electric Corporation's work on the property so as to preclude summary judgment dismissing the complaint as to those defendants (Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 352-353 [1981]). The record establishes as a matter of law that Sheldon did not exercise supervisory or safety control over the work in question, and as to that defendant the complaint was properly dismissed.

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On review of submissions pursuant to section 500.11 of the Rules, order modified, with costs to plaintiffs against defendants New York City Transit Authority, CAB Associates and Villafane Electric Corp., by denying the motions for summary judgment by these defendants and, as so modified, affirmed, with costs to defendant Sheldon Electric Company, Inc. against plaintiffs, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.
Decided November 20, 2007