Claim Case Studies & Legislation: Kidanemariam v. Toronto (City) 2017 ONSC 262

Facts

On April 10, 2012, the Plaintiff was walking down a busy sidewalk in the City of Toronto when she claims that she tripped on a discontinuity resulting in injuries rendering her unable to work. *Family Law Act* claims were also advanced by the Plaintiff's husband and daughter.

The City brought a motion for summary judgment to have the action dismissed.

Issues

1. Was the sidewalk in a state of disrepair?
2. Was the City liable for the Plaintiff's damages?

Legislation

Pursuant to the *City of Toronto Act*, the City has a duty to maintain highways including sidewalks. Where the City breaches this duty, it is liable under the *Negligence Act* for any damages resulting from the breach.

The legislation provides defences where the City did not know and could not reasonably have known about the state of repair or took reasonable steps to prevent the default from arising. A defence may also be available if, at the time the cause of action arose, minimum standards established by a regulation made under the Act applied to the highway and to the alleged default and these minimum standards were met.

In Toronto, the *Minimum Maintenance Standards for Highways in the City of Toronto* provides for the inspection of sidewalks. It states that the inspection of sidewalks, to check for surface discontinuities, must be done once per year. If a surface discontinuity on a sidewalk exceeds 2 cm, the minimum standard is to treat the surface discontinuity within 14 days after becoming aware of the fact.

The City's records indicated that their inspection of the area met the minimum standard.

The standard states that the road was to be patrolled "2 times every 7 days". The City's records indicated that this standard had been met.

The City's position was that because the minimum standards were met there was no genuine issue to be decided at trial, therefore, their motion for summary judgment should succeed.

Findings

Based on the City's records, the minimum standard for inspection was met and no state of disrepair was noticed at or near the location where the fall is said to have taken place.

The records produced by the City were accepted by the Judge as evidence that the patrols and inspection took place and that they complied with the minimum standard outlined in the regulations.

Neither the twice weekly drive-by patrols nor the annual walk-over inspections resulted in an expression of concern by the field inspectors of the City or a complaint from any other member of the public.

The incident did not occur on the actual flat surface of the sidewalk but at a location beside the commonly used area next to a newspaper box. This area was surfaced with paving stones and one of these stones was missing, causing the discontinuity. Given all of the facts, the City staff acted reasonably to discover faults in the sidewalk and the City could not reasonably be expected to know about the missing paver.

There was a lack of precision on the evidence concerning the depth of the depression where the fall allegedly occurred. The measurement done by the Plaintiff's lawyer indicated that it was less than 2 cm. An architect for the Plaintiff attended nearly four years after the incident and measured the depression with a quarter and the Judge found this approach to be inexact.

The Court's Ruling

The City took reasonable steps to guard against the alleged fall. It undertook a regular program of "patrols" and "inspections". That this should be accepted as sufficient is confirmed by the fact that these "patrols" and "inspections" met the minimum standards set by the regulation. The defence found at the *City of Toronto Act*, at s. 42(3)(b) ("the City took reasonable steps to prevent the default from arising") applies.

These same facts suggest the applicability of the defence found at s. 42(3)(a) of the Act ("the City did not know and could not reasonably have been expected to have known about the state of repair of the highway . . . "). The staff of the City did what was required to learn of the broken or missing "paver". As it is, and understanding that the staff acted reasonably to discover such faults in the sidewalk, the City cannot reasonably be expected to have known about the missing paver. Even if discovered, this would not necessarily have been readily identifiable as an impediment to safe passage. This "discontinuity" was not on a portion of the sidewalk intended for walking.

The Court granted the City's motion for summary judgment and dismissed the Plaintiff's claim.

Lessons Learned

Following a reasonable system of inspection and repair based on minimum maintenance standards and keeping documentation of the same, assists in the defence of trip and fall claims.

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