

**Elizabeth DaSilva v. City of New York Suzanne R. Hodeges and Sahand Rafil
Tabatabai; 2011 Jury Verdicts LEXIS 201796**

12665/06

November 10, 2011

Headline: Building's Owner Ignored Icy Sidewalk, Plaintiff Claimed

Published Date: December 19, 2011

Topic: Premises Liability - Negligent Repair and/or Maintenance - Premises Liability - Dangerous Condition - Premises Liability - Slip and Fall - Premises Liability - Snow and Ice - Premises Liability - Sidewalk

Injury: Fracture, Malleolus, Fracture, Ankle, Physical Therapy, Closed Reduction

Practice Area: Torts

State: New York

Court: Kings Supreme

Plaintiff Counsel

Norman Steiner

Firm Name: The Steiner Law Firm, PLLC.

Address: Kings, NY

Plaintiff Name: (Elizabeth DaSilva)

Defendant Counsel

George F. Sacco

Firm Name: Purcell & Ingrao, P.C.

Norman Steiner

Address: Mineola, NY

Defendant Name: (Suzanne R. Hodges)

None reported

Defendant Name: (City of New York, Sahand Rafil Tabatabai)

Judge: Debra Silber

Case Summary

On Feb. 14, 2006, plaintiff Elizabeth DaSilva, 42, a housekeeper, slipped on the sidewalk that abuts the premises of 110 Douglass St., in the Bococa section of Brooklyn. She fell, and she sustained an injury of an ankle.

DaSilva sued the premises' owner, Suzanne Hodges; the sidewalk's owner, the city of New York; and the adjoining premises' owner, Sahand Tabatabai. DaSilva alleged that the defendants were negligent in their maintenance of the sidewalk. She further alleged that the defendants' negligence created a dangerous condition.

The city and Tabatabai were ultimately dismissed, and the matter proceeded to a trial against Hodges.

Plaintiff's counsel noted that on Feb. 12, 2006, there was a snowstorm that deposited 15 inches of snow in the area. Counsel added that it was the custom and practice for Hodges, herself, to shovel the snow, and that Hodges testified that she would also throw salt down after she shoveled the snow but could not recall whether she did so on the subject date. Photographs showed that the sidewalk had been shoveled but that ice remained. Plaintiff's counsel contended that ice was present on the sidewalk and that Hodges should have salted the sidewalk or should have had someone else do it for her.

Plaintiff's counsel also noted that Hodges did not receive the residential exception to the sidewalk law, since her building contained not only three residential units but also three rental garages.

Hodges contended that she tried her best to maintain the sidewalk and that she had no specific recollection of the snowstorm. Defense counsel noted that Hodges also testified that it was her custom and practice that she herself would clear the sidewalk of snow and thereafter place salt on the ground on an as-needed basis and/or would have someone shovel snow and salt for her. Hodges claimed that she had no notice of the condition or incident until two months post-accident.

Defense counsel also contended that Hodges' property was a three-family residential dwelling, which voided any liability against Hodges, as she should have received the residential sidewalk law exemption. Counsel added that there was no proof that Hodges exacerbated the naturally occurring condition, which also cleared her of any liability.

Injury Text:

DaSilva was immediately taken via ambulance to Long Island College Hospital, in Brooklyn. She sustained a fracture of the lateral malleolus at the end of the fibula bone of her left ankle. She did not undergo surgery, and she was discharged the same day. She then wore a hard cast for two months, then a walker boot for two months, followed by two months of physical therapy.

DaSilva continues to have a slight limp and pain in the ankle. She claimed that she cannot walk the same distances she used to, that it is difficult for her to ambulate on uneven terrain, that she cannot wear high heels comfortably, that she has pain for the first 10 steps every day and that she no longer engages in strenuous activity, such as jumping

or running. DaSilva was out of work for eight months after the accident. DaSilva's expert in orthopedic surgery testified that DaSilva is expected to develop arthritis and a limited range of motion in the ankle.

DaSilva sought recovery of her past and future lost earnings and damages for her past and future pain and suffering.

Defense counsel contended that there was no permanency or limitations and that DaSilva would not develop traumatic arthritis, as the joint space was not invaded. The defense's orthopedic expert disputed DaSilva's expert's findings and contended that DaSilva would not develop arthritis or a limited range of motion. Defense counsel also noted that DaSilva ceased treatment within six months of the incident, and he challenged DaSilva's claimed lost earnings as speculative.

Trial Length

3.0 days

Jury Deliberation

1.0 hour

Jury Composition

2 male, 4 female

Post Trial Status

Defense counsel has moved to set aside the verdict. He is seeking a new trial. He contended that the lost-earnings and future-pain-and-suffering awards were excessive, and he also contended that Judge Debra Silber incorrectly determined that Hodges' property is a commercial property.

PLAINTIFF NAME

Elizabeth DaSilva

PROPERTY AWARD

\$ 261,200

Insurer:

State Farm Mutual Automobile Insurance Co. for Hodges

Plaintiff Amounts:

(Elizabeth DaSilva)

\$50,000 Personal Injury: Past Pain And Suffering

\$200,000 Personal Injury: future pain and suffering (13 years)

\$11,200 Personal Injury: lost earnings

Plaintiff Expert(s)

Placido A. Menezes, M.D.

Address: Brooklyn, NY

Specialty: Orthopedic Surgery

Affiliation: **Norman Steiner**

Defendant Expert(s)

Norman Steiner

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Edward A. Toriello, M.D.

Address: Middle Village, NY

Specialty: Orthopedic Surgery

Affiliation: testified via videotape, George Sacco

Award: \$ 261,200

Award Details: The jury found that Hodges was liable for the accident. It determined that DaSilva's damages totaled \$261,200.



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