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Premises Liability

Supermarket's patron claimed tray, tall rack created a hazard

Verdict: Defense

Case Type: Negligent Repair and/or Maintenance, Premises Liability - Dangerous Condition, Premises Liability - Store

Case: Sonya Bradoc v. Pathmark Stores, Inc., No. 11216/08

Venue: Westchester Supreme, NY

Judge: Richard B. Liebowitz

Date: 06-30-2009

PLAINTIFF(S)

Attorney:

- Michael F. Buchicchio; Scarsdale, NY, for Sonya Bradoc

Expert:

- Scott Haig; Orthopedic Surgery; Bronxville, NY called by: Michael Buchicchio

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DEFENDANT(S)

Attorney:

- Robert S. Ondrovic; Boeggeman, George & Corde, P.C.; White Plains, NY, for Pathmark Stores Inc.

Expert:

- Ralph Purcell M.D.; Orthopedic Surgery; Tarrytown, NY called by: Robert Ondrovic

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Facts:

On Nov. 20, 2007, plaintiff Sonya Bradoc, 82, tripped in a Pathmark grocery store that was located on Central Park Avenue, in Yonkers. She claimed that she fell and sustained an injury of a shoulder.

Bradoc sued the supermarket's owner, Pathmark Stores Inc. She alleged that the store's staff was negligent in its maintenance of the premises, that the staff's negligence created a dangerous condition and that Pathmark Stores was vicariously liable for the staff's actions.

Bradoc claimed that she tripped on an unattended tray that had been left on the floor in the middle of

an aisle. She contended that she was distracted by a 6-foot-tall bread rack that was blocking the aisle.

Bradoc's counsel read from a store manager's incident report, which both parties contested. The report indicated that Bradoc said that she fell while entering the aisle, rather than in the middle of the aisle, and that a store clerk said that she saw Bradoc trip over a display, but that she never fell. Bradoc's counsel contended that there were no witnesses to the incident, and he suggested that the clerk was lying to deflect blame for having left the tray unattended.

The clerk testified via a Peruvian interpreter. She contended that she had been in the aisle during the entire incident, packing bread from the tray onto the shelves. She claimed that the tray was on her right side and that Bradoc tripped behind her and to her left, never coming in contact with the tray, though she acknowledged that she never saw Bradoc trip because her back was turned toward her. Thus, the clerk contended that the tray was not unattended.

During cross-examination, Bradoc acknowledged that she could see a 1-inch-square tray in a photograph from a distance of 30 feet. As such, defense counsel argued that Bradoc should have been able to see and avoid the 3-foot-square tray that was blamed for her fall.

Injury:

The trial was bifurcated, so damages were not before the court.

Bradoc sustained a major tear of her right, dominant shoulder's rotator cuff. She presented to a hospital, where she underwent minor treatment. However, her injury was ultimately addressed via surgery and physical therapy.

Bradoc claimed that she suffers chronic residual pain and a permanent residual reduction of her right shoulder's range of motion. She sought recovery of her past medical expenses and damages for her past and future pain and suffering.

Verdict Information The jury rendered a defense verdict.

Post-Trial: Judge Richard Liebowitz denied plaintiff's counsel's motion for a new trial.

Editor's Comments This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.