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NEWS & EVENTS

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Traub Lieberman Partner Gregory S. Pennington and Associate Emily A. Velcamp Obtain Summary Judgment in Favor of Residential Property Owners

Related Attorneys: Gregory S. Pennington, Emily A. Velcamp

Traub Lieberman Partner Gregory S. Pennington and Associate Emily A. Velcamp obtained summary judgment in favor of their clients, owners of a residential property [the “Owners” or “Defendants”] used as a short-term rental in Beach Haven, New Jersey. Plaintiff alleged injuries resulting from a fall into an open water meter pit, located in the public sidewalk abutting the Owners’ property during the time within which the property was rented to plaintiff and his family. According to plaintiff, defendants breached their duty owed to him, relying on a Borough of Beach Haven Ordinance, thereby allowing the water meter pit to be raised in an unsafe manner, which resulted in plaintiff’s fall and subsequent injuries.

After the Court denied defendants’ initial Motion for Summary Judgment on the grounds that issues of material fact existed regarding defendants’ duty and the alleged breach of that duty, a Motion for Reconsideration was filed. Mr. Pennington and Ms. Velcamp argued that their clients, as residential landowners, owed no duty of care to plaintiff for the raised condition of the water meter pit lid, located in the abutting sidewalk, as they did not cause or contribute to the alleged condition. Defendants further argued that even if a duty of care existed, no breach occurred given the lack of notice to defendants, either actual or constructive. Plaintiff attempted to argue that defendants had constructive notice of the lid’s raised condition, relying on his expert report and the fact that defendants had 3.5 months from the date the property was purchased, to the date of the subject accident to discover the lid’s raised condition. Mr. Pennington and Ms. Velcamp successfully argued that despite plaintiff’s allegations and the findings contained in plaintiff’s expert report, authored 2 months after the alleged accident, there was still no credible, material evidence to say how long the water meter pit lid was in that raised condition to allow defendants a reasonable time to discover it, remedy it, or report it to the Borough.

The Court determined that, in light of the foregoing, defendants owed no duty to plaintiff as residential homeowners, and that plaintiff did not present evidence that such a condition was present for those 3.5 months or that reasonable investigation would have timely revealed it to defendants. The defendants’ Motion for Reconsideration and Motion for Summary Judgment were therefore granted, dismissing plaintiff’s Complaint with prejudice.

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