TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Attorneys Lisa M. Rolle, Eric D. Suben, and Justyn Verzillo Secure Dismissal of All Claims in a Premises Liability Case

Related Attorneys: Lisa M. Rolle, Justyn Verzillo

On an appeal of an order denying Defendant's motion to dismiss the complaint in a slip-and-fall action commenced in Kings County Supreme Court, Traub Lieberman attorneys Lisa M. Rolle, Eric D. Suben, and Justyn Verzillo successfully secured dismissal of all claims by the Appellate Division, Second Department, on behalf of Traub Lieberman's client.

The lawsuit sought to recover damages arising out of injuries the Plaintiff allegedly sustained when she slipped and fell in the shower of a rental property owned by the Defendant, a limited liability company. Plaintiff alleged that the subject shower was defective, and the Defendant negligent, based on the absence of non-slip surfacing and grab bars in the shower. Aside from premises liability (negligence), Plaintiffs asserted eight other causes of action, including gross negligence, breach of warranty of habitability, intentional infliction of emotional distress, negligent infliction of emotional distress, alter-ego liability, loss of consortium, and for declaratory judgment.

The judge in Supreme Court denied Traub Lieberman's motion to dismiss on behalf of Defendant, citing as the sole reason that the affidavits submitted with the motion were unsigned, and ignoring Traub Lieberman's arguments pointing out the glaring facial deficiencies of Plaintiff's pleading and that the signed affidavits were in fact submitted before the return date.

On appeal, the Second Department agreed that the complaint was fatally flawed and should have been dismissed in the first instance. Without reaching the issue of the affidavits, the justices determined that Defendant had no legal obligation to provide non-slip surfacing or grab bars in a shower or shower stall, and that the alleged absence of such could not support a cause of action sounding in negligence. As for each of the Plaintiff's eight remaining causes of action, the Second Department found that the facts alleged failed to support any of the theories asserted against Defendant.

The Second Department held that the Supreme Court erred in failing to dismiss each of Plaintiff's causes of action, overturning the lower court's decision denying the motion to dismiss, and dismissing the complaint in its entirety.

Click here to view the Decision and Order.

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