

VERDICT
VACATED

C

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

Dorothy Jones

-against-

NY Presbyterian Hospital

Index No. 301984/2011

Hon. Annell L. Thompson, Jr.
Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

decision on motion rendered
on the record in open
Court.

Motion to dismiss
pursuant to CPLR 4404(e)
granted.
The judgment on verdict
vacated. Case dismissed.

Motion is Respectfully Referred to:

Justice: _____

Dated: _____

Dated: 10/18/10

Hon. _____
J.S.C.

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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY : CIVIL TERM : PART IA-20

DOROTHY JONES,
Plaintiff,

-against-

Index No.
301984/2011

Court's Decision

NEW YORK PRESBYTERIAN HOSPITAL a/k/a
COLUMBIA UNIVERSITY MEDICAL CENTER
And NEW YORK PRESBYTERIAN HEALTHCARE
SYSTEM, INC.
Defendants.

October 18, 2016

Bronx Supreme Court
851 Grand Concourse
Bronx, New York

B E F O R E:
HON. KENNETH L. THOMPSON, JR.
J U S T I C E

A P P E A R A N C E S:

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New York Presbyterian Hospital
220 East 42nd Street
New York, New York 10017
BY: BARBARA D. GOLDBERG, ESQ.

CHRISTINE PLUSKOTA, R.P.R.
Senior Court Reporter

Proceedings

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THE COURT: Counsels on Jones, step up to the well. I will render a decision.

You can be seated.

You can put your appearance on the record, counsel for plaintiff.

MR. WATTLEY: Good morning. Wayne A.J. Wattley, W-A-T-T-L-E-Y, from Burns & Harris, 233 Broadway, Suite 900, New York, New York 10279. Standing in for Seth Harris. We represent Dorothy Jones, the plaintiff.

MR. PEARL: Luca & Pearl by Scott Pearl, 148 Madison Avenue, New York, New York 10016 for New York Presbyterian Hospital.

MS. GOLDBERG: And Martin Clearwater & Bell, 220 East 42nd Street, New York, New York 10017 by Barbara Goldberg. We're appellate counsel for the hospital.

THE COURT: Okay. At this point in time there has been no settlement that's been agreed to by the parties; is that correct?

MR. WATTLEY: That's correct, your Honor.

MR. PEARL: That's correct.

MS. GOLDBERG: That's correct.

THE COURT: All right. I have the motion here before me. The defendant's motion pursuant to CPLR 4404(a) to set aside the verdict in favor of the plaintiff and directing the entry of judgment as a matter of law in favor

Proceedings

1. of the defendant is granted.

2. The security guard on duty at the time of the
3. incident, February 16, 2011, Lisa Guerrido, testified maybe
4. 25 to 50 times in 22 years, while working for the defendant,
5. she had picked up the mesh hat or surgical cap off the floor
6. of the vestibule approximately 1.13 to 2.27 times per year,
7. the security guard, Lisa Guerrido, picked up the mesh hats
8. and the surgical cap in the vestibule.

9. I would direct the people to Gordon v The
10. American Museum of Natural History, 67 NY2d -- I don't know
11. if that's the correct cite -- 67. No, 67 NY2d 836, and
12. Grier v R.H. Macy & Company. That's 173 AD2d 238, and
13. Rivera v 2160 Realty Co., LLC, 4 NY3d 837.

14. The 1.13 to 2.37 surgical caps per year that the
15. security guard, Lisa Guerrido, picked up does not support
16. plaintiff's claim that this was a recurring condition, nor
17. does it establish that the defendant hospital was negligent
18. in not providing a safe place in the hospital. See Chianese
19. v Mecier, 98 NY2d 270 involving a recurring safety
20. condition, namely doors left open and assault and multiple
21. burglaries over a two-year period that preceded an attack on
22. the plaintiff. This case is not similar at all to the case
23. tried before me.

24. The Court finds that the plaintiff failed to
25. prove by a preponderance of the credible evidence that the

Proceedings

1 defendant, New York Presbyterian Hospital, was negligent on
2 February 16, 2011 with regard to the cap on the vestibule
3 floor. Actual or constructive notice of the condition
4 wasn't proved. Nor did plaintiff establish that this was a
5 recurring condition, caps in the vestibule.

6 Even assuming arguendo, the condition of the
7 missing tiles and rubber mats in the vestibule could be or
8 could attribute negligence on the part of the defendant, the
9 substantial factor in causing plaintiff's injuries was her
10 slipping on the caps or the mesh caps on February 16, 2011.

11 The issue of whether a defendant's negligence was
12 a proximate cause of an accident is separate and distinct
13 from the negligence determination. See Rodriguez v Budget
14 Rent-A-Car Systems, Inc., 44 AD3d 216, and Ohdan v New York,
15 268 AD2d 86. A defendant may act negligently without the
16 negligence constituting a proximate cause of the accident.

17 From the testimony adduced from the plaintiff, it
18 is clear that the proximate cause of her fall was the
19 surgical or mesh caps in the vestibule.

20 Accordingly, the defendant's motion is granted.
21 Judgment is granted in favor of defendants dismissing this
22 case. Judgment entered after verdict is hereby vacated.

23 The foregoing shall constitute the decision and
24 order of the Court.

25 Good day, Counsels.

Proceedings

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MS. GOLDBERG: Thank you, your Honor.

MR. WATTLEY: Your Honor, may I note my exception on the record, please?

THE COURT: Exception noted for the trial counsel.

MR. WATTLEY: Thank you, your Honor.

Certified to be a true and accurate transcript of the foregoing proceedings

Christine Pluskota, R.P.R.

So ordered
X. H. [Signature]

Retired **Thompson Jr.**

10/18/16