IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CAMILLE PERRY-STABLEY, Plaintiff	:	JURY TRIAL DEMANDED
vs.	:	NO. 10 – 00,089
47 WEST FOURTH, LLC, Defendant	:	CIVIL ACTION

OPINION AND ORDER

Before the Court is Defendant's Motion for Summary Judgment, filed March 7, 2011. Argument on the motion was heard May 3, 2011.

Plaintiff contends she fell while walking on the sidewalk located in front of property owned by Defendant and that her fall was the result of Defendant's negligence, specifically a breach of its duty to maintain and repair the sidewalk and keep it in a reasonably safe condition.[1] The parties agree that Defendant does have such a duty, but Defendant relies on the long standing principle that "[a]lthough property owners have a duty to maintain their sidewalks in a safe condition, property owners are not responsible for trivial defects that exist in the sidewalk." Mull v. Ickes, 994 A.2d 1137 (Pa. Super. 2010). In the instant motion, Defendant contends the Court can find as a matter of law that the defect which Plaintiff alleges caused her to fall is trivial, and that Defendant is thus entitled to judgment as a matter of law. Plaintiff, of course, argues that the defect is not trivial and that the matter must go to a jury.

The concept involved herein has been the focus of many courts over the years, even before the Supreme Court in Davis v. Potter, 17 A.2d 338, 339 (Pa. 1941), noted that "a[n] elevation, depression, or irregularity in a sidewalk may be

so trivial that, the court, as a matter of law, is bound to hold that there was no negligence in permitting it to exist." Cases wherein a defect was found to be so obviously trivial as to preclude imposing liability were collected by the District Court in Lowe v. Pirozzi, 2006 U.S. Dist. LEXIS 23726 (E.D. Pa. 2006), as follows: (1) a one and one-half inch difference between the levels of two abutting curbstones, McGlinn v. City of Philadelphia, 186 A. 747 (Pa. 1936); (2) a one and one-half inch space between the adjoining ends of flagstones at a street crossing, Newell v. City of Pittsburgh, 123 A. 768 (Pa. 1924); (3) an uneven, rough, unpaved step between a curb and sidewalk, that was two to four inches below the sidewalk level, Foster v. West View Borough, 195 A. 82 (Pa. 1937); (4) a manhole cover that projected two inches above the surface of the street, Harrison v. City of Pittsburgh, 44 A.2d 273 (Pa. 1945); (5) a hole that was one and one-eighth inches below the level of pavement and was in a twelve-by-fifteen inch area, Magennis v. City of Pittsburgh, 42 A.2d 449 (Pa. 1945); and (6) a saucer-like depression of one and one-half inches involving a water valve housing, Pischke v. Dormont Borough, 33 A.2d 480 (Pa. Super. 1942).

On the other hand, in determining that the defect in the case before it was *not* trivial, the Court in Mull v. Ickes, *supra*, gathered cases where the question was sent to the jury: (1) a break in the sidewalk that was 5 inches wide and 1 1/2 inches deep, Breskin v. 535 Fifth Ave., 113 A.2d 316 (Pa. 1955); (2) an irregular contoured hole in the sidewalk that was one-and-a-half to two inches in depth, Henn v. City of Pittsburgh**,** 22 A.2d 742 (Pa. 1941); (3) a one-half inch deep, six inch wide, twenty-eight inch long crack in the sidewalk, Massman v. City of Philadelphia**,** 241 A.2d 921 (Pa. 1968*)*; (4) a hole two to three inches deep, Aloia

[1] The evidence shows that the sidewalk in question had a ½ inch gap between two sections of concrete and a rise

v. Washington,, 65 A.2d 685 (Pa. 1949); (5) a large recessed tree well in the middle of a walkway, Burns v. City of Philadelphia**,** 504 A.2d 1321 (Pa. Super. 1986); and (6) a three to four inch depression in the sidewalk, Shafer v. Philadelphia**,** 60 Pa. Super. 256 (1915).

In the instant case, the ½ inch space between sections of concrete and the ½ inch rise between one section and the other clearly place this matter within that class of cases determined to be trivial. Thus, the Court finds as a matter of law that Defendant was not negligent in allowing the condition to exist, and that Defendant is entitled to judgment as a matter of law. Accordingly, the Court enters the following:

ORDER

AND NOW, this 6th day of May 2011, for the foregoing reasons, Defendant's motion for summary judgment is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

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from one to the other of no more than ½ inch.

cc: Matthew Zeigler, Esq.
Gregory Stapp, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson