

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

-----X

[REDACTED],

Plaintiff,

-against-

Index # [REDACTED]

[REDACTED]

EXPERT WITNESS

HOLDINGS INC.,

AFFIDAVIT IN

Defendant.

OPPOSITION

-----X

STATE OF NEW YORK)

ss.:

COUNTY OF DUTCHESS)

ROGER GREENWALD, being duly sworn, deposes and says:

I am an architect, duly licensed pursuant to the laws of the State of New York. My license number is 036259. My expertise is in the areas of architectural design and structural analysis. I have been a licensed architect in the State of New York since 2013. I have been qualified as an expert witness in both state and federal courts. A copy of my curriculum vitae is attached hereto as Exhibit "A".

2. I submit this affidavit in opposition to the defendant's motion for summary judgment. In support of my opinions I have been provided with relevant excerpts of the deposition transcripts of the plaintiff and of [REDACTED]. I have also reviewed the affidavits of [REDACTED] [REDACTED] R.A. I have reviewed photographs of the subject

staircase. I have reviewed the various Building Codes of the City of New York as well as various industry standards and regulations that were applicable in April, 2015.

3. It is my opinion, to a reasonable degree of architectural certainty that the defendant was in violation of provisions of the 2008 and the 2014 Building Code of the City of New York at the time of the accident. In is my further opinion that the “grandfather status” of this building does not preclude a finding that the defendant violated provisions of the codes. As set forth below, the stairs were unsafe at the time of the accident. [REDACTED]’s failure to comply with the intent and the letter of the building codes in place on April 27, 2015 represented violations from which negligence liability can be established.

4. The subject staircase is unsafe. It failed to conform to **Section 28-301.1**, found within the General Administrative Provisions of the 2014 New York City Building Code which is titled “Owner’s Responsibility”. A copy of that regulation is attached hereto as Exhibit “B”. As Equinox concedes that it had complete operation and control of the subject staircase, it is considered the “owner” for the purpose of this provision. The provision states:

All buildings and all parts thereof and all other structures shall be maintained in a safe condition... The Owner shall be responsible at all times to maintain the building and its facilities and all other structures regulated by this code in a safe and code-compliant manner...”

5. The first defect in the safety of the stairs is that the railings do not meet the governing standards of public safety required by the 2014 building code as set forth in Chapter 10 in section 1009.12-Handrails. The regulation states: **“Stairways shall have handrails on each side and comply with section 1012.”** This code requirement makes no exception for a staircase with a width less than 44 inches unless that staircase is enclosed. The subject staircase is not enclosed

and therefore does not fit within this or any other exception in the 2014 code. It is my opinion that any exception to this clear public safety requirement which was in place at the time of the accident claimed under the old legacies has been superseded by **section 28-301.1**. In this case, the defendant's failure to place full and complete handrails on both sides of the staircase was a violation of the regulation, and the 44 inch exception relied upon the defendant was no longer applicable under the Building Code of 2014.

6. It is generally accepted in the industry that evolving standards of public safety are embodied and articulated in the current version of the building code. Although standard practice of code enforcement does not always cite failures to upgrade as violations, and while some safety upgrades may be deemed impractical by the jurisdictional authorities, the simple addition of a handrail to bring a railing up to current standards of public safety would be considered both prudent and necessary under **28.301.1**, according to both code and industry standards of public safety. An owner that fails to bring basic public safety features up to current code standards acts at its peril, and more significantly, at the peril of the public/its patrons

7. It is well known that owners routinely seek to avoid upgrading safety features to current standards of public safety as required by current codes governing the maintenance of existing buildings by seeking shelter in outdated safety standards or legacy codes. Architects, such as myself, routinely warn owners that while owners may not be called to account to the City of New York for failing to upgrade safety features, when such upgrades are practical, they take an extreme risk, as in this case, where a person is seriously injured by reason of its failure to bring a property up to modern safety standards as defined by the code that was in effect at the time of the accident.

8. The Building Code demands safety as is defined therein. Existing buildings operating under grandfathered codes or no codes at all are not exempt. All buildings in the City of New York are governed by **28.301-1** including in the case where no code existed at the time of the initial construction. **Technical compliance with outdated codes or grandfather clauses is not an excuse for the failure to maintain safety as defined by the code in place at the time of the accident.** Succinctly stated, the code in place at the time of the accident rules!

9. A second safety violation committed by the defendant was with regard to the marble stair treads. The stair treads lack any proper anti-skid or slip resistant features to meet the governing standards of public safety required, as set forth in Chapter 10 of the 2014 Building Code of the City of New York **section 1003.4** which states:

Walking surfaces of the means of egress shall have a slip resistant surface....

10. As can be seen in the photographs, the stair treads are smooth marble which is a slip hazard when wet. (I cannot state with any certainty when the marble was installed. As the defendant never provided information as to when those stairs were built I am unable to comment on other potential building code violations committed by the defendant. The information concerning the age of this staircase is critical to determining potential liability. This fact is presently being hidden from the court.)

11. We know that sweat and possible other watery substances were constantly being tracked on that staircase. This fact seems to have been well known to the defendant in that the stairs were required to be cleaned at least three times per day. The defense has failed to provide any cleaning records of that staircase for the date of the accident or for any other date.

12. Wet polished marble has a low coefficient of friction. The defendant has admitted that sweat and other watery materials are tracked on the steps by patrons leaving the gym. According to prevailing industry standards, slip resistant stair treads are required in these areas. Compliance with section 1003.4 would have been relatively inexpensive to install and aesthetically unobjectionable for a well known gym that is open for business approximately 18 hours per day. For marble stair treads these slip resistant treatments can include glued down skid strips and clear slip resistant varnishes which contain fine quartz aggregates. These simple applications would have brought the surfaces up to the minimum industry standards of coefficient of friction. The failure by Equinox to comply with 1003.4 and the prevailing industry standards of public safety for walking surfaces in semi wet areas and in means of egress a clear violation of the codes of 2008 and 2014.

13. It is to be noted that when the defendant made a significant alteration to the stair rail system in 2011, more than doubling the lineal footage of railing at the subject level, it had both the opportunity and the obligation to conform to section 1003.4 which is also found in the 2008 code, by simply adding a full railing to the side which was only partially protected by railings. This would have been a simple, obvious and practical addition to the scope of the work. It could have been done in an aesthetically unobjectionable manner. By having made substantial alterations to the railing system of the staircase the defendant had both the opportunity and the obligation to bring the stair system up to current standards of public safety pursuant to section 1003.4 and 28-301.1.

14. It is my further opinion that the building codes are the bare minimum requirements to fulfill its safety obligations as required by the City of New York. Due to the high degree of foot

traffic on the subject staircase, [REDACTED] had an affirmative obligation to upgrade all elements of the staircase for the safety of its patrons.

WHEERFORE it is respectfully requested that the defendant's motion be denied in all respects.

ROGER GREENWALD

Sworn to before me this

Day of November, 2019

NOTARY PUBLIC