

**H**Taylor v. New York City Transit Authority  
48 N.Y.2d 903, 424 N.Y.S.2d 888  
N.Y. 1979.

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Lolita Taylor, as Administratrix of the Estate of  
Cynthia L. Taylor, Deceased, et al., Respondents,  
v.  
New York City Transit Authority, Appellant.  
Court of Appeals of New York

Argued November 12, 1979;  
decided December 11, 1979

CITE TITLE AS: Taylor v New York City Tr. Auth.

#### SUMMARY

Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered May 8, 1979, which affirmed a judgment of the Supreme Court in favor of plaintiffs, entered in Bronx County upon a verdict rendered at a Trial Term (Herbert Shapiro, J.), following a trial on the issue of damages. The appeal brings up for review a prior order of said Appellate Division, entered May 23, 1978 (63 AD2d 630), which, by a divided court, affirmed an interlocutory judgment of the Supreme Court in favor of plaintiff, entered in Bronx County upon a verdict rendered at a Trial Term (William P. McCooe, J.), following a trial on the issue of liability only. Plaintiffs commenced this action to recover damages for injuries sustained by Cynthia Taylor when she stumbled on a step and fell to her knees while attempting to walk down a flight of steps leading to a subway station. Specifically plaintiffs alleged that the heel of Mrs. Taylor's shoe got caught in a crevice on the step, causing her to fall. In the Court of Appeals defendant argued that no element of actionable negligence or notice of an alleged defective condition was established, and that the verdict was affected by reversible error in part of the charge to the jury.

Taylor v. New York City Tr. Auth., 70 AD2d 790, affirmed.

#### HEADNOTES

##### Negligence--Defect on Subway Steps

(1) In an action to recover for injuries sustained when the heel of plaintiff's \*904 shoe caught in the crevice of a step on a flight of stairs leading down to a subway station and she fell to her knees, an order of the Appellate Division which affirmed a judgment in favor of plaintiff after a trial on the issue of damages, and which brings up for review a prior order affirming an interlocutory judgment in her favor on the issue of liability, is affirmed. There was sufficient evidence in the record to support the jury's verdict with regard to the issues of negligent condition, proximate cause and constructive notice of the defect. There was no error in the court's refusal to make certain specific charges as required by defendant since the substance of the court's charges adequately incorporated and/or paralleled defendant's requests.

#### APPEARANCES OF COUNSEL

*John A. Murray* and *Helen R. Cassidy* for appellant.  
*Larry M. Carlin* for respondents.

#### OPINION OF THE COURT

The order of the Appellate Division should be affirmed.

In view of the affirmed factual findings, our only inquiry is whether there exists support in the record for the jury's verdict. The jury could have found that, whenever taken, the photographs introduced by plaintiff were a fair and accurate representation of the condition of the penultimate step on the stairway as of the time of the occurrence. From their depictions and the testimony of plaintiff and her daughter, the jury was presented with a question of fact from which it was also entitled to conclude that it represented a negligent condition and that it was the proximate cause of plaintiff's fall.

Nor can we say that, as a matter of law, the evidentiary basis was insufficient to demonstrate constructive notice of the defect. Specifically, the jury could

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have inferred from the irregularity, width, depth and appearance of the defect apparent from the concrete surface exhibited in the photographs, that the condition had to have come into being over such a length of time that knowledge thereof should have been acquired by the defendant in the exercise of reasonable care (*Blake v City of Albany*, 48 NY2d 875; *Batton v Elghanayan*, 43 NY2d 898, 900).

As to defendant's assertion of error in the trial court's refusal to incorporate the request to charge that the jury must find actual or constructive notice of "a defective condition on Stairway U2 [on the] 2nd step from the bottom", the language \*905 of the court's charge essentially paralleled the proffered instruction; in any event, no objection to the charge as given was lodged by defendant's counsel as required by CPLR 4110-b (*Pagnella v Action For A Better Community*, 57 AD2d 1076; see *Guaspari v Gorsky*, 29 NY2d 891). Neither can it be said that the court's refusal to charge that the absence of any record of prior accidents on the stairway might bear on the issue of foreseeability of the danger--to which an exception was taken--was erroneous since the charge, taken as a whole, adequately incorporated the substance of this request (see *Spinelli v Licorich*, 24 AD2d 172, 173-174, affd 19 NY2d 614; *Gross v City of New York*, 24 AD2d 751).

Chief Judge Cooke and Judges Jasen, Gabrielli, Jones, Wachtler, Fuchsberg and Meyer concur.  
Order affirmed, with costs, in a memorandum.

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