

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

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DONNA FLETCHER	:	
Plaintiff	:	
	:	OCTOBER TERM, 2017
vs.	:	
	:	NO. 1862
JUAN PENA	:	
Defendant	:	

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FINDINGS OF FACT and CONCLUSIONS  
OF LAW in FAVOR OF PLAINTIFF

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MASSIAH-JACKSON, J.

DOCKETED  
COMPLEX LIT CENTER

APR 23 2019

J. STEWART

Fletcher Vs Pena-FACTS



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April 23<sup>rd</sup>, 2019

## **FINDINGS OF FACT**

1. On the morning of October 19, 2015, Ms. Donna Fletcher, age 56 years, was walking on the sidewalk with her friend Ms. Sue Pearson.
2. When they approached 3537 North Joyce Street, Philadelphia, Ms. Fletcher tripped and fell at an open water drain.
3. The open ground drain had a pipe sticking out which someone had placed there.
4. Ms. Fletcher was taken by ambulance to Temple University Hospital where she was examined. CT scans and X-rays revealed left side fractures of scapula, wrist and forearm, three broken ribs, plus numerous bruises and contusions.
5. The Hospital provided pain medication, bandages, splints and braces, then sent her home to rest and heal.
6. Ms. Fletcher's daughter took care of her for several months assisting with personal matters and household chores.
7. The color photos and black and white Google photos were accepted by all parties as depicting the area of 3537 North Joyce Street.
8. Mr. Juan Pena testified that he was the owner of the property in 2015.
9. He stated that there never was a pipe in the drain area.
10. Mr. Pena explained that neither Ms. Fletcher nor anyone else ever told him about her fall or her injuries.

11. Mr. Pena identified recent photos of the drain area with the cover cemented and closed as his 2015 property.

### **CONCLUSIONS OF LAW**

1. On April 4, 2019, this Trial Court heard the non-jury trial pursuant to Rule 1311.1.
2. Counsel presented witnesses and exhibits, including medical records and photographs.
3. These Findings of Fact and Conclusions of Law are submitted pursuant to Rule 1038 of the Pennsylvania Rules of Civil Procedure.
4. A possessor of land is required to maintain abutting sidewalks in a reasonably safe condition for pedestrians.
5. An open drain hole or an open drain hole with a pipe sticking out are defective and dangerous conditions for assessment by the trier of fact. Breskin v. 535 Fifth Avenue, 113 A.2d 316 (Pa. 1955); Reinoso v. Heritage Warminster SPE, LLC, 103 A.2d 80 (Pa. Superior Ct. 2015).
6. Restatement (Second) of Torts §342 states:

#### **“§342 Dangerous Conditions Known to Possessor**

A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,

- (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and

(b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and

(c) the licensees do not know or have reason to know of the condition and the risk involved.”

7. Pa. Standard Civil Jury Instruction 18.80 explains the nature and extent of the owner’s duty of care when there is a claim of defect or unsafe condition on an abutting public sidewalk:

“One in possession of land is required to maintain the abutting public sidewalks in a reasonably safe condition to prevent or eliminate any hazardous or unsafe condition that, upon all the circumstances involved, would be an unreasonable risk of harm to pedestrians properly using walks.”


8. Mr. Pena is liable for the dangerous condition which existed on his sidewalk in October, 2015. Kaminski v. Sosmetal Products, Inc., 2019 WL 1474274 (Pa. Commonwealth Ct. 2019); Peair v. Home Assoc. of Enola Legion No. 751, 430 A.2d 665 (Pa. Superior Ct. 1980).

9. Ms. Fletcher had a duty and responsibility to observe where she was walking. In this case she was 10% comparatively negligent in failing to observe the dangerous condition on the sidewalk.

10. After careful consideration of the credible testimony of Plaintiff and review of the medical records submitted, this Court concludes that Ms. Fletcher suffered serious injuries as a result of the dangerous condition on the sidewalk. Damages are awarded in the amount of Twenty Five Thousand Dollars (\$25,000.00).

11. It will be the responsibility of counsel to mold the verdict award and exchange appropriate documents.

BY THE COURT:

  
FREDERICA A. MASSIAH-JACKSON, J.  
