

The Duty To Illuminate



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It is well settled that municipalities and private landowners have an affirmative duty to illuminate roads and property only in limited situations.

MUNICIPALITIES

Various laws enable municipalities to provide lighting for roadways and public places, for example General City Law § 20(7) and Highway Law § 327¹. However, none of these laws require a municipality to provide lighting. In *Bauer v. Town of Hempstead*, the Second Department emphasized that Highway Law § 327 gives discretion to towns to provide lighting to any area and to discontinue that lighting at any time.² The plaintiff in *Bauer* caught her foot on a raised curb while walking on a sidewalk and claimed that the area was inadequately illuminated. The Court held that the Town had no duty to light the public sidewalk area under Highway Law Section 327 and dismissed the claim.

In *Thompson*, the Court of Appeals held that the City of New York could not be held liable for plaintiff's injuries she sustained as a result of being struck by a car. The plaintiff was hit by a car while in a crosswalk that was not illuminated as the street light bulb had burned out. The Court determined that the City's duty to maintain streetlights is limited to the same situations in which it has the duty to illuminate. A municipality's duty to illuminate only arises when lighting is necessary to keep the street safe or because there is a defect or some unusual condition rendering the street unsafe to the traveling public. "The duty to maintain existing streetlights is similarly limited to those situations in which illumination is necessary to avoid dangerous and potentially hazardous conditions."³

The plaintiff in *Thompson* based liability on the City's failure to maintain the streets and roadways in a safe condition and to repair the burned out bulb. The Court held that in order to establish a cause of action against the City, the plaintiff would have to show that by failing to replace the bulb the City created a dangerous condition on the roadway where the plaintiff was injured.⁴ Here, the mere outage of the streetlight alone did not render the street dangerous

per se. As there was no unusual condition or defect present to create a potentially hazardous situation, the municipality's duty to illuminate was not triggered.

In a similar case, *Cracas v. Zisko and the Town of Brookhaven*, the Second Department agreed with the defendant municipality that it had no duty to replace a burned out street light bulb when a plaintiff was struck by a car as she was crossing the street at night. The plaintiff's allegation that the accident site was dark was insufficient on its own to create a duty by the Town to illuminate the area. Like *Thompson*, there was no evidence indicating that the Town created a dangerous condition at the site of the accident or that there was a defect or hazardous condition that existed on the roadway. The fact that the area was dark at night was insufficient alone to create a duty.⁵

In the Third Department case of *Gagnon v. City of Saratoga*, the plaintiff attended a fireworks display at a public park sponsored by the City defendant. As plaintiff was leaving the park she walked across a grassy area that led to the street as the paved walkway was crowded. When plaintiff approached the point where the grass ended, her foot caught the lip of the curb, which was slightly elevated above the grassy area. The plaintiff then fell onto the pavement and sustained various injuries. She brought a claim against the City based on its failure to maintain adequate lighting.

The Court held that the plaintiff did not establish a prima facie case against the City because she failed to show that the City had a duty to light the area where she was injured. Applying the *Thompson* rule, the Third Department concluded that a slight height difference between the grass and the curb, in an area that was not meant to be traversed, was not the type of dangerous or hazardous situation that would trigger the municipality's duty to illuminate.⁶

In *Rios v. City of New York*, the plaintiff brought an action against the City of New York for injuries he sustained when he was struck by a motorcycle while crossing a street at night. At the time of the accident the plaintiff was transferring from one bus stop to another

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directly across the street. The bus stops were located under an overpass that, according to the plaintiff, had light fixtures installed on the ceiling, many of which often did not work. The plaintiff alleged that the City was liable for negligently failing to maintain the lights under the overpass where the plaintiff was hit. The Second Department found that the City was not liable under this theory because there was no testimony indicating that the lack of lighting contributed or caused a dangerous condition which was a proximate cause of the subject accident. The Court went on to say that "the mere fact that a street light burned out and that the street was dark is not sufficient to render a street dangerous and is not sufficient to establish a cause of action sounding in negligence."⁷

In another case that demonstrates the difficulty in holding a municipality liable for failing to provide lighting, the First Department held in *Hayden v. City of New York* that a municipality could not be liable for breaching a duty to maintain street lights because there was no evidence that lighting was necessary to keep the subject street safe. The plaintiff in *Hayden* sued the City after he sustained injuries in a motorcycle accident he claimed to be the result of a "total absence of artificial illumination," and that before the plaintiff was able to adjust to the darkness, his motorcycle struck debris on a roadway that was being repaved causing him to lose control.⁸ The plaintiff alleged that the municipality was negligent in allowing a condition of darkness on the roadway and in failing to provide or restore adequate illumination during the course of renovation on the roadway. The Court found that the plaintiff failed to allege in his complaint that there was a defect or unusual condition that existed in the road that would have required lighting to keep the road safe. Therefore, the City had no duty to maintain the existing streetlights.

In contrast with the cases discussed above, the Appellate Division, Fourth Department, reversed the Supreme Court's decision granting summary judgment in favor of the City of Rochester when a plaintiff alleged that the City breached its duty to provide adequate lighting. In *Graham v. City of Rochester*, the plaintiff sustained injuries as a result of a one-car accident while driving through an underpass. The underpass was flooded and the lack of adequate lighting in the under pass created a black hole effect preventing motorists from being able to see that water had accumulated in the underpass. The Fourth Department held that a question of fact

existed as to whether the City breached its duty to provide adequate lighting to keep the street safe. The Court further held that as a result of the erroneous dismissal of plaintiff's claim, he was "deprived of a fair opportunity to prove at trial his claim that the City's inadequate maintenance of the lighting...created a dangerous condition that was a proximate cause of the accident and his injuries."⁹

PRIVATE LANDOWNERS

The Court of Appeals in *Basso v. Miller* determined a single standard of reasonable care for landowners. In *Basso*, the plaintiff was injured in a motorcycle accident on the defendant's property, which functioned as a scenic park tourist attraction and was open to the public from 8 a.m. until a half hour before dark. The Court departed from the notion that a landowner's duty of care should correlate to the status of the plaintiff, i.e. invitee, licensee or trespasser; instead, the Court of Appeals said that a landowner must "act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk."¹⁰ Thus, the duty of a landowner to illuminate his property will be determined on a case-by-case basis, taking into account the purpose of the property, potential plaintiffs, as well as financial and environmental costs.

In *Peralta v. Henriquez*, plaintiff was a guest staying at an apartment building and sued the defendant, the building's owner, to recover damages for an injury she sustained when she ran into a bent car antenna while running through a parking lot at night. The plaintiff alleged that the defendant had a duty to illuminate the lot and caused a dangerous condition that led to her injury. The Court of Appeals held that the defendant had no general duty to illuminate the lot at all times, but rather the duty owed to the plaintiff was measured by whether the defendant knew or should have known that the existing lighting was adequate given the use and design of the lot. Here, a landowner's duty to illuminate their property at all hours of darkness would have significant environmental and financial costs that would outweigh any social benefit derived from the duty imposed. Furthermore, the Court stated that "finding failure to illuminate alone created a dangerous condition would produce an indeterminate class of plaintiffs without any reasonable limitations on liability."¹¹

The Second Department relied on the Court of

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Appeals holding in *Peralta* when it decided the case *Savage v. Desantes*. Plaintiff, a pizza delivery person, brought an action against the owner of a building after he fell while walking down a staircase in a three-unit apartment building. The plaintiff alleged that the building's owner breached his duty of care by failing to adequately illuminate the staircase. The defendant provided working light fixtures in the stairwell with switches at both the top and bottom of the stairs, leaving the responsibility of turning on and off the lights as-needed to the tenants. Furthermore, there was no evidence on the record that the defendant ever received complaints about the lighting in the stairwell. The Court determined that the defendant did not breach his duty of reasonable care owed to the plaintiff because he maintained his property in a reasonably safe condition. The holding went on to recognize that "imposing a requirement that owners provide continuous stairwell lighting during all hours of darkness would place a new and undue burden on owners."¹²

Contrast this with *Pollack v. Klein* where the plaintiff was injured when she stepped through an open doorway and fell down a set of concrete stairs while staying as a guest in the defendant's home. The plaintiff alleged that the defendant was negligent in failing to illuminate the dark hallway where the open door led to the basement. Plaintiff said that she was unfamiliar with this specific area of the house, that she could not see anything and that the defendant failed to warn her of the potential danger. The Supreme Court, Queens County, granted the defendant's motion for summary judgment, dismissing the plaintiff's case for failure to establish a prima facie case. However, the Appellate Division Second Department reversed and the matter was remitted to the Supreme Court for a new trial. The Court determined that given the evidence the case should have been submitted to the jury for resolution, rather than being disposed as a matter of law.¹³

IN CONCLUSION

Courts have been reluctant to place financial burdens on municipalities and private landowners which would require them to provide costly lighting and result in expanded liability. In these difficult economic times, where municipalities have to cut services and put off municipal repairs and improvement projects, it is unlikely that a defendant's duty to illuminate will expand.

- 1 Gen. City Law 20(7); Highway Law Section 327.
- 2 *Bauer v. Town of Hempstead*, 143 A.D.2d 793, 794 (2d Dept. 1988).
- 3 *Thompson v. City of New York*, 78 N.Y.2d 682, 684 91991).
- 4 *Id.* at 685.
- 5 *Cracas v. Zisko*, 204 A.D.2d 382 (2d Dept. 1994).
- 6 *Gagnon v. City of Saratoga Springs*, 51 A.D.3d 1096 (3d Dept. 2008).
- 7 *Rios v. City of New York*, 33 A.D.3d 780, 782 (2d Dept. 2006).
- 8 *Hayden v. City of New York*, 26 A.D.3d 262 (1st Dept. 2006).
- 9 *Graham v. City of Rochester*, 184 A.D.2d 990, 992 (4th Dept. 1992).
- 10 *Basso v. Miller*, 40 N.Y.2d 233 (1976).
- 11 *Peralta v. Henriquez*, 100 N.Y.2d 139, 145 (2003).
- 12 *Savage v. Desantes*, 56 A.D.3d 1013, 1015 (3d Dept. 2008).
- 13 *Pollack v. Klein*, 39 A.D.3d 730 (2d Dept. 2007).