

2013 WL 10449326 (D.C.Super.) (Trial Pleading)  
Superior Court of the District of Columbia,  
Civil Division.

Darlene Eubank HOWELL, Plaintiff,

v.

FORT MYER CONSTRUCTION CORPORATION, Serve:  
C.T. Corporation System, Registered Agent, Defendants.

No. 2013CA003576.  
May 21, 2013.

Jury Trial Demanded

### **Complaint**

[Roy Carleton Howell](#) (415142), 8003 Parkside Lane, N.W., Washington, D.C. 20012, Telephone No. (202) 545-0755 voice mail, Telephone No. (202) 545- 0750 home, Cell No. (202) 445-3263.

#### COMPLAINT FOR NEGLIGENCE

1. This is a civil action seeking compensatory and punitive damages against Defendant for negligence, negligence *per-se*, negligent hiring and selection, negligent training, negligent supervision, gross negligence, and other tortuous conduct all in violation of common law, regulations, statutes, Municipal Regulations, and Safety Plans.

#### ***JURISDICTION AND VENUE***

2. Jurisdiction is vested in this Court pursuant to [D.C. Code § 11-921](#). Jurisdiction is also vested pursuant to [18 DCMR § 2100.4](#) where D.C has adopted the U.S. Department of, Transportation Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD: 2009 Edition).

3. Jurisdiction is vested in this Court pursuant to the safety standards found in the D.C. Work Zone Temporary Traffic Control Manual (2006 Edition), which includes and expands reasonable safe pedestrian routes through temporary facilities around work sites covered by the accessibility requirements of the American with Disabilities Act of 1990 (ADA) ([Public Law 101-336, 104 Stat.327](#), July 26, 1990. [42 USC 12101-12213](#) (as amended).

4. This Court has jurisdiction over Defendant pursuant to [D.C. Code §§ 13-422](#) and [13-423\(a\)\(3\)](#).

5. Venue in this Court is proper because all of the acts complained of herein occurred in the District of Columbia.

#### ***PARTIES***

##### **(A.)Plaintiff**

6. Darlene Eubank Howell (Plaintiff) is a resident of the District of Columbia who resides at 8003 Parkside Lane, N.W. Washington, D.C. 20012.

7. Plaintiff was, at all times relevant, a resident of D.C. who lived at 8003 Parkside Lane, N.W. Washington, D.C. 20012.

8. Plaintiff is an **elderly** married woman with four adult children, and engages in daily walks in her community for back and neck disability, and exercise for her disability.

**(B.)Defendant**

9. Fort Myer construction Corporation (Defendant) engages in the construction, repair, and maintenance of streets, roads, bridges, and underground utilities for commercial, residential, and government sectors in the District of Columbia, Maryland and Virginia. Defendant provides asphalt, concrete, and architectural paving services; repair and construction of storm drains, sanitary sewers, water mains, utility banks, water retention systems, oil, grit and water retention services, including demolition, site excavation, erosion and sediment control, cleaning and grubbing, hauling spoils and fill materials, turf establishment, and dam and pond construction and engineering.

10. Defendant's corporate headquarters is located at 2237 33<sup>rd</sup> Street, N.E., Washington, D.C. 20018. Defendant's Asphalt Plant # 1 is located at 2000 5<sup>th</sup> Street, N.E., Washington, D.C. 20002. Defendant's Asphalt Plant # 2 is located at 1155 W Street, N.E., Washington, D.C. 20002.

11. Defendant was, at all times relevant, located in the District of Columbia and doing business in D.C.

***FACTS***

12. On approximately the morning of September 8, 2012 Plaintiff left her home to take her daily routine walk in her community for exercise to address her back and neck disability.

13. As an **elderly** disabled pedestrian Plaintiff walked her routine path to the park and surrounding Colonial Village community.

14. While on her routine walk Plaintiff attempted to cross the street near the Colonial Village intersection of Parkside Lane and Parkside Drive and fell to the ground due to street construction by Defendant causing Plaintiff to injure her hip, knees, shoulder, hands and forehands.

15. Plaintiff fell to the ground with such force that she also aggravated her pre-existing back and neck disabilities causing further permanent and painful injury.

16. At all times herein, Defendant's agents and employees were acting under the direction and control of Defendant and were obligated to comply with all District of Columbia laws, regulations, ordinances, safety plans, and all statutes.

17. Defendant's workers, employees, agents, managers and supervisors did not have any "orange caution cones," or "warning signs to pedestrians," or "yellow tape," or any notice whatsoever that construction work was being performed at the intersection where Plaintiff fell.

18. As Plaintiff walked her routine morning walk she was totally unaware that Defendant had performed street construction on her path because Defendant provided absolutely no notice or any warning to pedestrians regarding the Parkside Lane and Parkside Drive intersection construction.

19. After violently falling Plaintiff limped in agonizing pain on Parkside Lane and saw Defendant's employee William Dickerson; whereupon Plaintiff cried out the emotional utterance "why don't you put a sign or something here!"

20. Plaintiff's son immediately came to assist his mother and witnessed Defendant's employees, workers, and agents placing "orange caution cones" and notice of construction at the very location where Plaintiff had just fallen.

21. Plaintiff immediately went to Washington Adventist Hospital Emergency Department for treatment.

***COUNT I: GENERAL NEGLIGENCE***

22. Paragraphs 1- 21 are incorporated by reference as though full set forth and repeated herein.

23. The Plaintiff was at all times conducting herself in a lawful manner and with due and proper regard for her safety.

24. While on a routine walk in her Colonial Village community Plaintiff violently fell to the ground suffering injury as a result of Defendant's construction.

25. Defendant was negligent in failing to properly give notice to pedestrians that construction was being performed at the location where Plaintiff fell and suffered injury.

26. That at the aforesaid time and place, it was the duty of Defendant and its agents to perform street construction with reasonable care and due regard for the safety of pedestrians and disabled pedestrians in the community.

27. That at the aforesaid time and place, the Defendant and its agents did breach said duty by carelessly, recklessly and negligently performing road construction and subjecting pedestrians and disabled pedestrians to danger, and subsequently injuring Plaintiff.

28. That as a direct and proximate result of Defendant's negligence, Plaintiff has sustained serious and permanent injuries; she has been prevented from transacting her business; she suffered and will continue to suffer great pain of body and mind and has suffered permanent disability and deformity.

29. That as a further direct and proximate result of the Defendant's negligence, Plaintiff has incurred costs for hospitalization, x-rays, nurses, medical treatments and medicine for the treatment of the aforementioned injuries.

30. For such injuries, and for additional economic damages proximately resulting from Defendant's negligence Defendant is liable to Plaintiff in an amount of not less than \$2,000,000, and for all attorney's fees as to this Count.

***COUNT II: NEGLIGENCE PER-SE***

31. Paragraphs 1- 28 are incorporated by reference as though full set forth and repeated herein.

32. Defendant had a duty of care to Plaintiff pursuant to the D.C. Work Zone Temporary Traffic Control Manual (2006 Edition), which includes and expands providing reasonable safe pedestrian routes through temporary facilities around work sites covered by the accessibility requirements of the American with Disabilities Act of 1990 (ADA) ([Public Law 101-336, 104 Stat.327](#), July 26, 1990.42 USC 12101-12213 (as amended). [D.C. Work Zone Temporary Traffic Control Manual (2006 Edition), attached and marked as Exhibit # 1, pp. 3-1 to 3-5, 5-1 to 5-2 and 5-5]. Also, Defendant violated their D.C Temporary Traffic Control Plan (TTC) obligations.

33. That at the aforesaid time and place, the Defendant and its agents did breach said duty by carelessly, recklessly and negligently performing road construction and subjecting pedestrians to danger, and subsequently injuring Plaintiff.

34. That as a direct and proximate result of Defendant's negligence *per-se*, Plaintiff has sustained serious and permanent injuries; she has been prevented from transacting her business; she suffered and will continue to suffer great pain of body and mind and has suffered permanent disability and deformity.

35. That as a further direct and proximate result of the Defendant's negligence, Plaintiff has incurred costs for hospitalization, x-rays, nurses, medical treatments and medicine for the treatment of the aforementioned injuries.

36. For such injuries, and for additional economic damages proximately resulting from Defendant's negligence *per-se* Defendant is liable to Plaintiff in an amount of not less than \$2,000,000, and for all attorney's fees as to this Court.

### ***COUNT III: NEGLIGENT HIRING AND SELECTION***

37. Paragraphs 1- 28 are incorporated by reference as though full set forth and repeated herein.

38. Defendant had a duty of care to Plaintiff to hire qualified employees and agents to comply with the D.C. Work Zone Temporary Traffic Control Manual [D.C. Work Zone Temporary Traffic Control Manuel (2006 Edition), See, Exhibit # 1] and to comply with D.C.'s requirements imposed pursuant to [18 DCMR § 2100.4](#) adoption of MUTCD. [MUTCD (2009 Edition) attached and marked as Exhibit # 2, p. 561-563, 576-577, 586 and pp. 547-550] to provide safe pedestrian routes.

39. Defendant violated their D.C. Temporary Traffic Control (TTC) Plan by failing to have qualified and/or knowledgeable agents at the work site to insure safety of pedestrians, and pedestrians with physical disabilities.

40. That as a direct and proximate result of Defendant's negligence *per-se*, Plaintiff has sustained serious and permanent injuries; she has been prevented from transacting her business; she suffered and will continue to suffer great pain of body and mind and has suffered permanent disability and deformity.

41. That as a further direct and proximate result of the Defendant's negligence, Plaintiff has incurred costs for hospitalization, x-rays, nurses, medical treatments and medicine for the treatment of the aforementioned injuries.

42. For such injuries, and for additional economic damages proximately resulting from Defendant's negligence *per-se* Defendant is liable to Plaintiff in an amount of not less than \$2,000,000, and for all attorney's fees as to this Court.

### ***COUNT IV: NEGLIGENT TRAINING***

43. Paragraphs 1- 28 are incorporated by reference as though full set forth and repeated herein.

44. Defendant had a duty of care to Plaintiff to train their employees and agents to understand and comply with the D.C. Work Zone Temporary Traffic Control Manual [D.C. Work Zone Temporary Traffic Control Manuel (2006 Edition), See, Exhibit # 1] and to comply with D.C.'s requirements imposed pursuant to [18 DCMR § 2100.4](#) adoption of MUTCD. [MUTCD (2009 Edition), See, Exhibit # 2] to provide safe pedestrian routes.

45. Defendant violated their D.C. Temporary Traffic Control (TTC) Plan by falling to have trained and/or property trained agents at the work site to insure safety of pedestrians, and pedestrians with physical disabilities.

46. That as a direct and proximate result of Defendant's negligence *per-se*, Plaintiff has sustained serious and permanent injuries; she has been prevented from transacting her business; she suffered and will continue to suffer great pain of body and mind and has suffered permanent disability and deformity.

47. That as a further direct and proximate result of the Defendant's negligence, Plaintiff has incurred costs for hospitalization, x-rays, nurses, medical treatments and medicine for the treatment of the aforementioned injuries.

48. For such injuries, and for additional economic damages proximately resulting from Defendant's negligence *per-se* Defendant is liable to Plaintiff in an amount of not less than \$2,000,000, and for all attorney's fees as to this Count.

***COUNT V: COMMON LAW NEGLIGENT SUPERVISION, TRAINING AND HIRING***

49. Paragraphs 1- 28 are incorporated by reference as though full set forth and repeated herein.

50. Defendant had a duty of care to Plaintiff to supervise, train, and hire agents to comply with D.C. common laws, and safety plans, regarding the safety of pedestrians and pedestrians with disabilities.

51. That as a direct and proximate result of Defendant's negligence in violation of D.C. common laws, regulations, ordinances and all statutes, Plaintiff has sustained serious and permanent injuries; she has been prevented from transacting her business; she suffered and will continue to suffer great pain of body and mind and has suffered permanent disability and deformity.

52. That as a further direct and proximate result of all Defendant's negligence, Plaintiff has incurred costs for hospitalization, x-rays, nurses, medical treatments and medicine for the treatment of the aforementioned injuries.

53. For such injuries, and for additional economic damages proximately resulting from Defendant's negligence Defendant is liable to Plaintiff in an amount of not less than \$2,000,000, and for all attorney's fees as to this Count.

***COUNT VI: GROSS NEGLIGENCE***

54. Paragraphs 1- 53 are incorporated by reference as though full set forth and repeated herein.

55. As a further proximate result of the substantial harm caused by Defendant's willful and reckless disregard of all regulations, ordinances, laws, statutes and safety plans, Plaintiff is entitled to an award of \$5,000,000 in punitive damages.

***REMEDY***

56. WHEREFORE, Plaintiff demands judgment against Defendant for an amount of not less than \$2,000,000 per each Count for a total of not less than \$10,000,000 in compensatory damages, and \$5,000,000 in punitive damages, plus costs and interest.

***JURY DEMAND***

57. Plaintiff demands a trial by jury as to all issues raised in her Complaint.

Respectfully submitted,

<<signature>>

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