

New York Appeal – Construction Defect

SERVICES

Construction Litigation

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Walter J. Klimczak, III

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Walter Klimczak obtained the reversal of a New York Supreme Court decision which denied summary judgment on behalf of a construction contractor. The plaintiff claimed that he was injured after stepping off of a sidewalk and into a pothole in the roadway. The Supreme Court ruled that there was a question of fact as to whether the client owed the plaintiff a duty of care because of the work they did in the general vicinity of the accident. On appeal the Appellate Division, First Judicial Department unanimously reversed the Supreme Court's decision and ordered that Summary Judgment enter on behalf of the client as to all direct and cross-claims against it. In doing so, the Appellate Court ruled that the evidence showed that the client performed no work in the roadway where the alleged fall occurred, that work in the general vicinity of the accident was not enough to create a question of fact, and that there was no evidence or proof that would permit the finding of proximate cause.