Appellate Division Holds That Plaintiff's Injuries Did Not Satisfy The TCA's Threshold For Recovery Of Damages

February 27, 2019 | by Einhorn Barbarito

In *Spentz v. Newark Housing Authority* (A-5007-16T4), the Appellate Division affirmed the dismissal of plaintiff's personal injury claims due to her failure to present objective evidence that her injury satisfied the Tort Claims Act's ("TCA") requirement of a permanent loss of a bodily function. In December 2013 the plaintiff fell through a hole in the floor of her apartment in a building that was owned and maintained by the defendant, Newark Housing Authority. Due to the plaintiff's complaints of knee and lower back pain, she underwent physical therapy and chiropractic treatment. The plaintiff also underwent MRI testing to her right knee and lumbar spine. The MRI results revealed that the plaintiff had a lateral meniscal tear in her right knee, and moderate disc bulges in her lower back. Subsequently, the plaintiff consulted an orthopedic surgeon who recommended right knee arthroscopic surgery. However, the plaintiff elected not to undergo the surgery to repair the meniscal tear in her knee.

After completing discovery, the defendant filed a motion for summary argument arguing the plaintiff failed to present evidence that she suffered a permanent and substantial loss of a bodily function as required by the TCA. The lower court granted the defendant's motion after determining that the plaintiff's injuries did not meet the TCA's threshold for damages.

On appeal, the Appellate Division affirmed this decision and held that the plaintiff's proofs lacked objective evidence of a reduction in normal bodily function that is permanent and substantial under the TCA. The Appellate Division noted that the plaintiff had no treatment to her lower back or right knee since June 2014, and none of the plaintiff's medical experts opined that she suffered a substantial loss of a bodily function. Importantly, the court indicated that the plaintiff had no medical restrictions imposed on her daily activities. The court cited to the plaintiff's deposition testimony where she admitted she was able to walk around her apartment, use public transportation, shop for groceries, and perform household tasks such as cleaning and laundry. Although the plaintiff testified at her deposition that she required daily medication due to her pain and she had difficulty with daily activities like

walking and climbing stairs, the plaintiff's subjective complaints and described limits on her activities were insufficient to satisfy the TCA's damages threshold.