

Filed

SEP 30 2019

Suzanne C. Johnson, Clerk
Court of Appeals
of Maryland

IN THE COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2019

PETITION DOCKET NO. 304

[REDACTED]

Petitioner,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE CITY

Respondent.

**On Appeal from the Circuit Court of Baltimore City
Circuit Court Case No. 24-C-19-003533
(The Honorable Lawrence P. Fletcher-Hill, Presiding)**

PETITION FOR WRIT OF CERTIORARI

**Adam M. Spence, Esquire
Elizabeth H. Johnson, Esquire
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Counsel for Petitioner**

[REDACTED]

PETITION FOR WRIT OF CERTIORARI

Petitioner, [REDACTED] [REDACTED] [REDACTED] (“Petitioner”), by Adam M. Spence, Esq., Elizabeth H. Johnson, Esq., and SPENCE | BRIERLEY, and pursuant to Rule 8-301(a)(3) & 8-303 and §§ 12-305 & 307 of the Courts and Judicial Proc. Art., files this *Petition for Writ of Certiorari*.

PROCEDURAL BACKGROUND

This appeal originally arises from a District Court for Baltimore City case styled [REDACTED] [REDACTED] v. *Mayor and City Council of Baltimore*, Civil Case No. 0101-0029420-2018, involving a personal injury claim arising from a slip on a worn-down-smooth manhole cover. Petitioner was successful at the trial level. Respondent then obtained the reversal of the trial court’s decision through appellate review by the Circuit Court. Petitioner now seeks review of the Circuit Court’s erroneous ruling through this *Petition for Writ of Certiorari*.

Because of the posture of this case, the Court of Special Appeals has not heard this appeal nor does it have jurisdiction to do so.

A. Decision of the Trial Court

After hearing evidence at a full trial, Judge Kevin M. Wilson of the District Court of Maryland for Baltimore City determined that the Respondent (a) was negligent, breaching its standard of care to maintain its walkways in a safe and passable condition by failing to repair a dangerous defect posed by a worn-down-smooth manhole cover in a passage way; (b) had constructive notice of that dangerous defect; and (c) that Petitioner was injured as a result, through no fault of his own. The trial court entered judgment in favor of Petitioner in the amount of \$12,544.00 in compensatory damages, plus (i) costs of \$51.00 and (ii) post-judgment interest at the legal rate.

B. Decision Of The Circuit Court Sitting as an Appellate Court

Petitioner's success was short lived. The Respondent appealed the trial court's decision to the Circuit Court in the matter styled *Mayor and City Council of Baltimore v. [REDACTED]* [REDACTED] (Appeal) Case No. 24-C-19-003533.

On August 30, 2019, the Honorable Lawrence P. Fletcher-Hill of the Circuit Court for Baltimore City heard oral arguments on Respondent's appeal on the record after briefing by the parties.

On September 11, 2019, Judge Fletcher-Hill issued his Opinion and Order, from which this *Petition for Writ of Certiorari* arises.

The Circuit Court affirmed the trial Court's decision that the smooth manhole cover was, indeed, a "dangerous defect" and "slippery as ice," which led to Petitioner's injury. However, the Circuit Court then erroneously held that, because Petitioner presented no evidence of prior slipping accidents, the evidence was insufficient as a matter of law to establish the Respondent's negligence. That is, the court held that Petitioner's evidence of the "open and obvious" worn-down-smooth manhole cover was insufficient as a matter of law to create notice necessary to give rise to Respondent's negligence. Accordingly, Judge Fletcher-Hill reversed the District Court's decision by Opinion and Order, dated September 11, 2019 and remanded it, having fully adjudicated all claims between the parties. No formal mandate has issued.

QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT ERRED AS A MATTER OF LAW IN ITS DETERMINATION THAT THE RESPONDENT WAS NOT ON CONSTRUCTIVE NOTICE OF AN OPEN, OBVIOUS & READILY OBSERVABLE "DANGEROUS DEFECT" IN ITS PUBLIC PASSAGEWAYS

To address this Question Presented, there are no pertinent constitutional provisions, statutes, ordinances or regulations.

REASON THIS COURT'S REVIEW IS IN THE PUBLIC INTEREST

It is in the public interest for this Court to review the Circuit Court's decision for two reasons.

First, the Circuit Court's decision, if left unreviewed, permits the Mayor and City Council of Baltimore to abdicate their responsibility to repair open and obvious "dangerous defects" in its public passageways, which can lead to further injuries.

Second, because this is an issue of first impression, it is in the public interest for this Court to provide municipalities with guidance on whether they must replace dangerously worn-down-smooth manhole covers where pedestrians walk or face liability. This issue is distinct from other rulings by this Court regarding sidewalk "variation" liability because of the differing nature of sidewalk surfaces from the clearly visible traction footholds (or not) on discrete manhole covers.

Indeed, because of the lack of case law on the topic in Maryland, the Circuit Court's appellate ruling was based primarily on the application of the law of another jurisdiction (*Lyon v. City of Logansport*, 35 N.E. 128 (Ind. App. 1893)). Applying that case (and the other state's notice requirements), Judge Fletcher-Hill held that because there was no evidence of previous accidents, there can be no constructive notice attributed to Respondent. Maryland, however, does not require "that prior accidents be shown to establish liability," particularly when a condition is dangerous and long existing. *President & Com'rs of Town of Princess Anne v. Kelly*, 200 Md. 268 (1952).

STATEMENT OF FACTS

On November 27, 2017, Petitioner walked northbound to his car on Guilford Avenue from the Orphan's Court of Baltimore City. Petitioner was wearing "Wingtip" shoes with leather soles to the metered parking on the side of the road. The weather was "fine" with dry conditions and without any rain. As Petitioner entered the roadway to cross Saratoga Street, Petitioner "glanced up to make sure [the light] was green." Petitioner "saw the manhole cover."

Petitioner had "no traction on the manhole cover." Petitioner saw "nothing" on the manhole. Petitioner "hit the manhole cover. It was like hitting a sheet of ice." He "slipped back" and broke his ankle.

ARGUMENT

THE APPELLATE (CIRCUIT) COURT ERRED AS A MATTER OF LAW IN ITS DETERMINATION THAT THE RESPONDENT WAS NOT ON CONSTRUCTIVE NOTICE OF AN OPEN & OBVIOUS "DANGEROUS DEFECT" IN ITS PUBLIC PASSAGEWAYS

After listening to testimony, reviewing evidence and listening to arguments, the trial court imposed liability on Respondent. The trial court held that Respondent was on notice of the worn-down-smooth manhole which had lost its traction footholds over a long period of time.

On appeal, the Circuit Court disagreed, stating that "in the absence of evidence of actual knowledge by the City [through reporting of prior accidents] ... it is insufficient as a matter of law to create negligence on the part of the City." (Opinion and Order by the Circuit Court for Baltimore City, at 5). In this, the Circuit Court erred as a matter of law. Under Maryland law, Respondent had constructive notice of the dangerously worn-down-smooth manhole cover.

In order for a municipality to be held liable for negligence, a plaintiff is required to show that the municipality had actual or constructive notice. *Colbert v. Mayor & City Council of Baltimore*, 235 Md. App. 581, 588 (2018). "Constructive notice is notice that the law imputes

based on the circumstances of the case. A municipality is charged with constructive notice when the evidence shows that—as a result of the ‘nature’ of a defective condition or the ‘length of time it has existed’—the municipality would have learned of its existence by exercising reasonable care.” *Id.* (citations omitted). It is “not essential to a plaintiff’s case that prior accidents be shown to establish liability,” particularly when the condition is dangerous and long existing. *President & Com’rs of Town of Princess Anne v. Kelly*, 200 Md. 268 (1952).

The evidence in this case supported, as a matter of law, the trial judge’s determination that constructive notice existed. Petitioner submitted into evidence a considerable number of pictures of manhole covers with raised, safe foothold traction near the worn-down-smooth one that Mr. Borgerding slipped on. The one Petitioner fell on had its traction footholds visibly worn smooth over time, leaving it without any remaining safe footholds or grips, and slippery as a “sheet of ice.”

There is a reason that the other manhole covers pictured in Plaintiff’s evidence have traction on them: a manhole with worn-down footholds provides no safe foothold and creates a dangerous condition. A similar finding was made in *Lyon v. Logansport*, 9. Ind. App. 21, 35 N.E. 128, 128-130 (1893)(emphasis added)(noted as a better considered authority by *Leonard v. Lee*, 191 Md. 426 (1948)):

the creasings in the gutter crossing had become worn away, so that the surface of the crossing, except for a space of ten or twelve inches on the outer edges, had, by constant use, become as smooth as a polished piece of wood, and very smooth, sleek, and slippery, so that no safe foothold was presented by such crossing...

* * *

This condition, when taken in connection with its location in a public and much-traveled street, and with the other facts descriptive of its character, conclusively shows it to be dangerous. It has been adjudged that parts of a sidewalk or street may be held to be defective, in cases where the circumstances made a case much less strong than this.

Further, the manhole cover without traction footholds in this case was open and obvious, being in the middle of the pedestrian street crossing. The worn-down-smooth manhole cover was

not, as the City suggests, “so minor as to make its discovery unlikely.” *See Leonard v. Lee*, 191 Md. 426 (1948)(“Thus constructive notice is equated to triviality in the holding that the municipality is not chargeable with constructive notice if the defect is so minor as to make its discovery unlikely.”).

Rather, the the worn-down-smooth manhole cover was next to a considerable number of other manhole covers that did appropriately and safely contain raised traction footholds. As testified to by Mr. [REDACTED], “I also took pictures of all the surrounding manhole covers in the area. And the grooves are very pronounced for traction.” Indeed, when looking at the pictures of the varying manholes and addressing an objection to Mr. [REDACTED] testifying to the raised footholds on other manholes, the Judge remarked: “I’m gonna sustain the statement, [a picture of the nearby manhole cover] clearly shows raised marks. All right, so I’ll sustain that.” And “... if you look on the left-hand portion of [Plaintiff’s evidence], [the subject manhole cover] clearly shows there were raised grooves and across the rest of the surface of the manhole cover, they’ve obviously worn down through time.”

Likewise, later during an exchange between counsel, the trial judge noted the significance of the pictures regarding the visible traction or lack thereof:

MR. SPENCE: *** The first thing we see is our, our exhibit, our Exhibit Two, Plaintiff’s Exhibit Two, which is the, the manhole itself. Clearly visibly slick or smooth. Visibly smooth with no friction whatsoever, except –

MR. POTTER: Objection.

MR. SPENCE: For the tiny bit on the far left side.

COURT: Overruled.

MR. SPENCE: I, I think you can observe that from the picture. You can observe that –

COURT: The pictures are the best evidence, I’ll say that

MR. SPENCE: Absolutely. And also the testimony...

In addition, the undisputed facts and inferences therefrom in this case established that the manhole cover’s condition was long present, having “obviously [been] worn down through time.

So it's obviously been there for quite some time.” Of course, “[n]o greater degree of certainty is required of circumstantial evidence than of direct evidence. In reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial.” MPJI-Cv 1:8.

In the exercise of “reasonable care,” the Respondent would have certainly come across and should have noticed the worn-down-smooth manhole cover. Having weighed this and other evidence, the trial judge found constructive notice and imposed liability against Respondent.

Because the Circuit Court erred when it reversed the trial court’s decision, this Court should grant a Writ of Certiorari to (a) review, reverse and remanded this case so as to reinstate the trial court’s judgment against Respondent and (b) establish clear guidance to municipalities as to the replacement of worn-down-smooth manhole covers which can be as “slippery as ice”.

CONCLUSION

For the foregoing reasons, Petitioner, [REDACTED] [REDACTED] [REDACTED] respectfully requests that this Court grants his Writ of Certiorari and review the decision of the Circuit Court for Baltimore City.

Respectfully Submitted,

[REDACTED]

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Fax: (443) 836-9181
adam@spencefirm.com
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2019, I caused to be served a copy of the foregoing on the following persons or entities via regular U.S. Mail, postage prepaid:

Steven J. Potter, Chief Solicitor
Department of Law
Mayor and City Council of Baltimore
100 Holliday Street, First Floor
Baltimore MD 21202



Adam M. Spence, Esq.

██████████ ████████████████████ ██████████

Plaintiff,

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendant.

IN THE
CIRCUIT COURT
FOR BALTIMORE CITY

Case No. 24-C-19-003533

ORDER

This matter came before the Court on August 30, 2019 on an appeal on the record from the District Court of Maryland for Baltimore City. Defendant Mayor and City Council of Baltimore appealed the District Court's judgment against it. Plaintiff ██████████ and Defendant City both appeared at the hearing by counsel.

For the reasons stated in the accompanying Memorandum Opinion, it is this 3rd day of September, 2019, by the Circuit Court for Baltimore City, Part 26, hereby **ORDERED** that the judgment of the District Court of Maryland for Baltimore City is **REVERSED**.

It is further **ORDERED** that this matter is **REMANDED** to the District Court of Maryland for Baltimore City for entry of judgment in favor of Defendant Mayor and City Council of Baltimore.

It is further **ORDERED** that Plaintiff shall pay the costs of this appeal.

Judge's Signature appears on the original document

TRUE COPY
TEST

Judge Lawrence P. Fletcher-Hill

Judge Lawrence P. Fletcher-Hill

Marilyn Bentley

MARILYN BENTLEY CLERK



██████████ ██████████ ██████████
Plaintiff,

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendant.

IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

Case No. 24-C-19-003533

MEMORANDUM OPINION

This matter came before the Court on August 30, 2019 on an appeal on the record from the District Court of Maryland for Baltimore City. Defendant Mayor and City Council of Baltimore (“City”) appealed the District Court’s judgment against it. Plaintiff ██████████ and Defendant City both appeared at the hearing by counsel.

District Court Proceedings

Plaintiff ██████████ ██████████ ██████████ brought this action for personal injuries against Defendant City in the District Court of Maryland for Baltimore City. The action was tried in the District Court on May 8, 2019, before Judge Kevin M. Wilson. Judge Wilson found the City to be negligent and entered judgment for Plaintiff in the amount of \$12,544.00. The City noted a timely appeal to this Court.

Mr. ██████████ testified at trial that he was crossing Saratoga Street on foot, at its intersection with Guilford Avenue in downtown Baltimore, when he stepped on a manhole cover, slipped, and fell. The weather conditions were clear and dry. He broke his ankle in the fall. He introduced medical records to support the nature and expense of his medical treatment, and he testified to a period of lost earnings from his law practice.

Mr. [REDACTED] did not testify that the manhole cover was loose. Rather, he testified that the surface was unexpectedly very slick when he stepped on it. He introduced photographs of the cover that show that it was worn over time to the point that almost all of the ridge pattern cast in the metal was worn smooth. He introduced photographs of multiple other underground utility covers at the same intersection that show a variety of raised patterns still present in most of those covers. His theory of negligence at trial and on appeal is that the City had constructive notice of the worn, and therefore, slippery condition of the manhole cover on which he slipped and that the City was negligent in failing to replace the worn cover.

Discussion

This Court reviews the decision of the District Court as an appellate court and applies the same standard as any appellate court reviewing a trial court decision. *Rohrer v. Humane Soc'y of Washington Cty.*, 454 Md. 1, 21-22 (2017). The Court will reverse a factual finding only if it is clearly erroneous. *Id.* The Court reviews legal conclusions without any special deference. *Id.*

The City argues that it was and is entitled to judgment as a matter of law because Plaintiff's evidence was insufficient to establish negligence or notice of the allegedly dangerous condition. The Court rejects the City's argument that negligence in these circumstances could only be proved by expert testimony concerning the appropriate degree of friction required for manhole covers. If the City can be held liable for a slick manhole cover resulting from wear, then that condition can be proved by lay testimony of the type given by Mr. [REDACTED]. It is within the competence of a lay person to observe the surface of the cover and to note the absence of ridges that were once present, including in contrast to other similar covers in the roadway.

The City does not dispute that it has a "duty of keeping its roads in good repair and in a condition reasonably safe for travel and use by the public." *Board of Cty. Comm'rs for Cecil*

City v. Dorman, 187 Md. App. 443, 455 (2009). The City is not required to maintain its streets in “perfect condition and repair,” *Lynch v. Mayor & City Council of Baltimore*, 169 Md. App. 623, 630-31 (1936), and it “is not an insurer of safe passage,” *Smith v. City of Baltimore*, 156 Md. App. 377, 383 (2004).

The City places greatest emphasis on *Leonard v. Lee*, 191 Md. 426 (1948). In that case, the plaintiff slipped on a sidewalk in Towson immediately after exiting a store. *Id.* at 428-29. The plaintiff’s husband testified that, after the accident occurred, “he slid his foot along the sidewalk where she had fallen, and it was very slippery, and he noticed it was on an angle.” *Id.* at 430. The slippery area was about 18 inches in diameter. *Id.* “The only evidence that the sidewalk became slippery through wear was Mr. Leonard’s affirmative answer to a question asked on cross examination by counsel for [one of the private property owners] that ‘what caused your wife to fall was the worn smooth slippery spot on the pavement, is that right?’” *Id.* There was also evidence that one of the private property owners was aware of the issue and had workers try to scuff the surface of the sidewalk. *Id.*

The *Leonard* plaintiffs “strenuously contend[ed] that the slippery condition of the sidewalk constitute[d] an actionable defect.” *Id.* at 434. The Court disagreed, “differentiat[ing] between conditions which will render the municipality liable, and those which are the necessary concomitant of use over a period of time.” *Id.* at 431.

There could not be any inherent lack of care in paving a sidewalk with cement, or in letting a cement sidewalk remain unrepaired, unless it was broken or was in such a condition that it was *obviously* dangerous. Here we have, at most, a case where the pavement became slightly irregular (if it was worn as claimed by one of the plaintiffs) from the action of time, and this Court has already said, in *Cordish v. Bloom*, [138 Md. 81 (1921)], that a municipality is not liable for such a condition.

Id. at 434.

To distinguish *Leonard*, Plaintiff ██████████ stresses *Lyon v. City of Logansport*, 35 N.E. 128 (Ind. App. 1893), one of the cases from other jurisdictions cited by the *Leonard* Court. 191 Md. at 435-36. The slip and fall in that case occurred on a cast iron “gutter crossing.” *Lyon*, 35 N.E. at 128. Similar to the patterns in the manhole covers, the gutter crossing when new was “perforated with diamond-shaped spaces” and had “creases cast diagonally in the crossing, about one-fourth of an inch in depth and three eighths of an inch wide.” *Id.* Over time, the metal “had become worn entirely smooth on the top, leaving the edges of the diamond-shaped spaces smooth and rounded, and the creasings in the gutter crossing had become worn away, so that the surface of the crossing, except for a space of ten or twelve inches on the outer edges, had, by constant use, become as smooth as a polished piece of wood.” *Id.* There was also specific evidence that “the marshal of the city” had seen at least one person fall at the same point ten months before the accident and that “a policeman of the city” had seen numerous people slip and one person fall at the same crossing. *Id.* at 129. In support of a verdict for the plaintiff, the court noted: “It is also expressly found by the special verdict *that the city did have knowledge* of the character of the crossing for 90 days before the accident. Thus we have the dangerous defect, *knowledge by the city*, and abundant time to repair it.” *Id.* at 130 (emphasis added).

Both *Leonard* and *Lyon* support the City’s position in this case as a matter of law. The *Leonard* Court placed *Lyon* among “[t]he better considered authorities,” 191 Md. at 435, but it did so in distinguishing *Lyon* as a case involving an inherently dangerous and known condition. To this Court, the clearest distinguishing factor was the City of Logansport’s actual knowledge through its agents of multiple prior slipping accidents at that location. There was no sufficient evidence of prior accidents in *Leonard*, and there is no such evidence at all in this action. At oral argument, Plaintiff’s counsel acknowledged that Plaintiff was proceeding in this case entirely on

a theory of constructive knowledge based on an obligation of the City to inspect manhole covers and to discover those that have excessive surface wear.

This Court concludes that, in the absence of evidence of actual knowledge by the City of the condition of the manhole cover, the argument that the City *could* have or *should* have inspected the manhole cover to discover the wear to it is insufficient as a matter of law to create negligence on the part of the City in these circumstances.

Conclusion

For these reasons, this Court will enter a separate order reversing the judgment of the District Court.

September 3, 2019

Judge's Signature appears on the
original document
Judge Lawrence P. Fletcher-Hill
Judge Lawrence P. Fletcher-Hill

TRUE COPY
TEST

Marilyn Bentley

MARILYN BENTLEY, CLERK



Circuit Court of Maryland

[Go Back Now](#)**Case Information**

Court System: **Circuit Court for Baltimore City - Civil System**
Case Number: **24C19003533**
Title: **[REDACTED] vs Mayor And City Council Of Baltimore**
Case Type: **District Court Record Appeal** Filing Date: **06/28/2019**
Case Status: **Closed/Inactive**
Case Disposition: **Decision Reversed** Disposition Date: **09/03/2019**
District Case No: **29420-2018**

Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Plaintiff** Party No.: **1**

[REDACTED]
Attorney(s) for the Plaintiff/Petitioner

Name: **Spence, Esq, Adam M**
Appearance Date: **06/28/2019**
Practice Name: **Spence Brierley, P.C.**
Address: **409 Washington Ave**
Suite 1000
City: **Towson** State: **MD** Zip Code: **21204**

Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: **Defendant** Party No.: **1**

Business or Organization Name: **Mayor And City Council Of Baltimore**
Address: **100 N Holliday St.**
City: **Baltimore** State: **MD** Zip Code: **21202**
Attorney(s) for the Defendant/Respondent

Name: **Potter, Esq, Steven J**
Appearance Date: **06/28/2019**
Practice Name:
Address: **100 Holiday Street**
Lower Level 05
City: **Baltimore** State: **MD** Zip Code: **21202**

Court Scheduling Information

Event Type: **Civil Trial - Fast Track** Notice Date: **08/20/2019**
Event Date: **08/30/2019** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **09/03/2019**

Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: **1/0**
File Date: **06/28/2019** Entered Date: **07/01/2019** Decision:
Document Name: **Record Appeal from District Court**

Doc No./Seq No.: **2/0**
 File Date: **06/28/2019** Entered Date: **07/01/2019** Decision:
 Document Name: **Notice of Record Received**

Doc No./Seq No.: **3/0**
 File Date: **07/02/2019** Entered Date: **07/02/2019** Decision:
 Document Name: **Expedited Track Scheduling Order Sent**
Event: CTFT Block Date: 08/30/19 Facility: 403FPARTIES : Potter, Steven 100 Holiday Street Lower Level 05, Baltimore, MD, 21202 Spence, Adam 409 Washington Ave Suite 1000, Towson, MD, 21204

Doc No./Seq No.: **4/0**
 File Date: **07/19/2019** Entered Date: **07/22/2019** Decision:
 Party Type: **Defendant** Party No.: **1**
 Document Name: **Memorandum in Opposition to the Decision of District Court**

Doc No./Seq No.: **4/1**
 File Date: **08/07/2019** Entered Date: **08/08/2019** Decision:
 Party Type: **Plaintiff** Party No.: **1**
 Document Name: **Memorandum In Response To Appellant's Memorandum In Opposition To The decision Of The District Court.**

Doc No./Seq No.: **4/2**
 File Date: **08/09/2019** Entered Date: **08/13/2019** Decision:
 Party Type: **Plaintiff** Party No.: **1**
 Document Name: **Memorandum in Response to Appellant's Memorandum in Opposition to the Decision of the District Court**

Doc No./Seq No.: **4/3**
 File Date: **08/12/2019** Entered Date: **08/13/2019** Decision:
 Party Type: **Defendant** Party No.: **1**
 Document Name: **Reply to Appellee's Memorandum in Support of the District Court's Decision**

Doc No./Seq No.: **5/0**
 File Date: **08/20/2019** Entered Date: **08/20/2019** Decision:
 Document Name: **Batch Hearing Notice Sent**
Event: CTFT Block Date: 08/30/19 Facility: 403FPARTIES : Potter, Steven 100 Holiday Street Lower Level 05, Baltimore, MD, 21202 Spence, Adam 409 Washington Ave Suite 1000, Towson, MD, 21204

Doc No./Seq No.: **6/0**
 File Date: **08/30/2019** Entered Date: **08/30/2019** Decision:
 Document Name: **Open Court Proceeding**
Francis Boergerding Jr. Vs. M & CC8/30/2019 Case submitted to court for determination without the aid of a jury. (Fletcher-Hill, J) 8/30/2019 The decision of the district court is heard and hereby held "Sub-Curia"; order to be filed. (Fletcher-Hill,J)

Doc No./Seq No.: **6/1**
 File Date: **09/11/2019** Entered Date: **09/11/2019** Decision:
 Document Name: **Memorandum Opinion and Order**
It is this 3rd day of September, 2019:ORDERED that the judgment of the District Court of Maryland for Baltimore City is REVERSED. It is further ORDERED that this matter is

REMANDED to the District Court of Maryland for Baltimore City. It is further ORDERED that Plaintiff shall pay the costs of this appeal. Judge Fletcher-Hill.

Doc No./Seq No.: **6/2**

File Date: **09/11/2019** Entered Date: **09/11/2019** Decision:

Document Name: **Copies Mailed**

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

DISTRICT COURT OF MARYLAND

[Go Back Now](#)**Case Information**

Court System: **DISTRICT COURT FOR BALTIMORE CITY - CIVIL SYSTEM**
 Case Number: **010100294202018** Claim Type: **TORT**
 District/Location Codes: **01 / 01** Filing Date: **12/03/2018** Case Status: **APPEALED**

Complaint, Judgment, and Related Persons Information

(Each Complaint, Hearing, Judgment is listed separately, along with each Related Person)

Complaint Information

Complaint No: **001** ([REDACTED]) Vs: **(MAYOR AND CITY COUNCIL OF BALTIMORE)**
 Type: **REGULAR CLAIM**
 Complaint Status: **APPEALED**
 Status Date: **05/17/2019** Filing Date: **12/03/2018** Amount **\$30000** Last Activity Date: **07/01/2019**

Judgment Information

Judgment Type: **TRIAL JUDGMENT ENTERED** Judgment Date: **05/08/2019**
 Judgment Amount: **\$12,544.00** Judgment Interest: **\$0.00** Costs: **\$51.00** Other Amounts: **\$0.00**
 Attorney Fees: **\$0.00** Post Interest Legal Rate: **X** Jointly and Severally: In Favor of Defendant:
 Possession Of Property Claimed valued At: **\$0.00** Is Awarded To The: Together With Damages Of: **\$0.00**
 Value Of Property Sued For: **\$0.00** Plus Damages Of: **\$0.00** Is Awarded To The: Dismissed With Prejudice:
 Replevin/Detinue Amount: **\$0.00**
 Recorded Lien Date: **05/08/2019** Judgment renewed Date:
 Renewed Lien Date: Satisfaction Date:

Related Person Information

Name: **POTTER, STEVEN J**
 Connection to Complaint: **ATTORNEY FOR DEFENDANT**
 Address: **1ST FLOOR**
 City: **BALTIMORE** State: **MD** Zip Code: **21202**
 If Person is Attorney: Attorney Code: Attorney's Firm: **100 HOLLIDAY STREET**

Name: **SPENCE, ADAM M**
 Connection to Complaint: **ATTORNEY FOR PLAINTIFF**
 Address: **409 WASHINGTON AV #1000**
 City: **TOWSON** State: **MD** Zip Code: **21204**
 If Person is Attorney: Attorney Code: **006576** Attorney's Firm: **LAW OFC SPENCE BRIERLEY**

Name: **MAYOR AND CITY COUNCIL OF BALTIMORE**
 Connection to Complaint: **DEFENDANT**
 Address: **S/O: ANDRE M. DAVIS**
 Address: **100 N. HOLLIDAY ST STE 101**
 City: **BALTIMORE** State: **MD** Zip Code: **21202**

Name: **BORGERDING, FRANCIS X JR**
 Connection to Complaint: **PLAINTIFF**
 Address: **4912 FORGE HAVEN DRIVE**
 City: **PERRY HALL** State: **MD** Zip Code: **21128**

Name: **KRAUSE, EVAN**
 Connection to Complaint: **PRIVATE PROCESS SERVER**
 Address: **P.O. BOX 15**
 City: **FELTON** State: **PA** Zip Code: **17322**

Name: **GBMC HOSPITAL**

Connection to Complaint: **WITNESS FOR DEFENDANT**
 Address: **ATTN MEDICAL RECORDS**
 Address: **6701 N CHARLES ST**
 City: **TOWSON** State: **MD** Zip Code: **21204**

Case History Information

(Each Event listed for the case is listed below in chronological order)

Type: **INITIAL CASE FILING** Complaint No.:

Date: **12/03/2018** Comment: **INITIAL CASE FILING**

Type: **TRIAL** Complaint No.:

Date: **12/06/2018** Comment: **TRIAL SET FOR: 03062019;TIME: 0830A;LOC:01;ROOM:**

Type: **COMMENT** Complaint No.:

Date: **12/06/2018** Comment: **REG 49-11351197 12/04/2018**

Type: **COMMENT** Complaint No.:

Date: **12/06/2018** Comment: **JKT TO RR**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **12/06/2018** Comment: **NOTICE OF INITIAL TRIAL (ATP)-D1**

Type: **SUMMONS RENEWAL FILED** Complaint No.: **001**

Date: **02/04/2019** Comment: **SUMMONS RENEWAL ;DEF;REQ BY ATP**

Type: **TRIAL/HEARING POSTPONEMENT** Complaint No.:

Date: **02/06/2019** Comment: **TRIL;03062019;0830A;01;SRNW;BY CLK;PREV SET ON 12062018**

Type: **COMMENT** Complaint No.: **001**

Date: **02/06/2019** Comment: **REGISTER 52 11616350 02/05/19**

Type: **COMMENT** Complaint No.:

Date: **02/06/2019** Comment: **JKT TO RR**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/06/2019** Comment: **NOTICE OF TRIAL POSTPONEMENT (ATP)-C1**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/06/2019** Comment: **NOTICE OF SUMMONS RENEWAL (ATP)-P1**

Type: **SERVICE** Complaint No.: **001**

Date: **02/13/2019** Comment: **SRNW;02042019;DEF;SV-SERVED ;**

Type: **INTRODUCTION OF MEDICAL, DENTAL, AND HOSPITAL RECORDS** Complaint No.: **001**

Date: **02/14/2019** Comment: **INTRODUCTION OF MEDICAL, DENTAL, AND HOSPITAL RECORDS**

Type: **INTRODUCTION OF BUSINESS RECORDS** Complaint No.: **001**

Date: **02/14/2019** Comment: **PLN**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/25/2019** Comment: **NOTICE OF OUTCOME OF SPECIFIC SERVICE - SRNW(ATP)-A2**

Type: **NOTICE OF SERVICE OF PRE-JUDGMENT INTERROGATORIES** Complaint No.: **001**

Date: **02/26/2019** Comment: **NOTC OF SERV: PRE-JUDGMENT INTERROGATORIES FILED BY;DEF**

Type: **INTENTION TO DEFEND FILED** Complaint No.: **001**

Date: **02/26/2019** Comment: **INTENTION TO DEFEND FILED /NO REASON GIVEN**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/28/2019** Comment: **NOTICE OF FILING OF INTENTION TO DEFEND (ATP)-B1**

Type: **NOTICE OF SERVICE OF PRE-JUDGMENT INTERROGATORIES** Complaint No.: **001**

Date: **03/04/2019** Comment: **NOTC OF SERV: PRE-JUDGMENT INTERROGATORIES FILED BY;PLN**

Type: **COMMENT** Complaint No.: **001**

Date: **03/06/2019** Comment: **REC'D DUPLICATE SERVICE**

Type: **NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES** Complaint No.: **001**

Date: **03/12/2019** Comment: **NOTC OF SERV: ANSWERS TO INTERROGATORIES FILED BY ;PLN**

Type: **SUBPOENA ISSUED** Complaint No.: **001**

Date: **03/26/2019** Comment: **SUBPOENA ISSUANCE ;WID;REQ BY ATD**

Type: **NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES** Complaint No.: **001**

Date: **03/27/2019** Comment: **NOTC OF SERV: ANSWERS TO INTERROGATORIES FILED BY ;PLN**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **04/05/2019** Comment: **NOTICE OF HEARING/TRIAL - TRIL (ATD)-Z1**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **04/05/2019** Comment: **ALSO SENT TO - ATP,**

Type: **SERVICE** Complaint No.: **001**

Date: **04/05/2019** Comment: **SUBP;03262019;WID;SV-SERVED ;001**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **04/08/2019** Comment: **NOTICE OF OUTCOME OF SPECIFIC SERVICE - SUBP(ATD)-A2**

Type: **COMMENT** Complaint No.: **001**

Date: **05/08/2019** Comment: **KEY POINTS 950 11:12**

Type: **TRIAL JUDGMENT ENTERED** Complaint No.: **001**

Date: **05/08/2019** Comment: **TRIAL JUDGMENT ENTERED**

Type: **TRIAL DELETE** Complaint No.:

Date: **05/08/2019** Comment: **TRIL;05082019;0830A;01;BY OAH;JUDGMENT ENTERED**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **05/08/2019** Comment: **NOTICE OF JUDGMENT ENTERED - (ATD)-J1**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **05/08/2019** Comment: **ALSO SENT TO - ATP,**

Type: **APPEAL TO CIRCUIT COURT** Complaint No.: **001**

Date: **05/16/2019** Comment: **I;06282019;APPEAL TO CIRCUIT COURT ;ATD**

Type: **TRANSCRIPT COST IN APPEAL** Complaint No.: **001**

Date: **05/16/2019** Comment: **TRANSCRIPT COST IN APPEAL ; ;REQ BY ATD**

Type: **TRANSCRIPT COST IN APPEAL** Complaint No.: **001**

Date: **06/21/2019** Comment: **TRANSCRIPT COST IN APPEAL ; ;REQ BY ATD**

Type: **COMMENT** Complaint No.: **001**

Date: **07/01/2019** Comment: **MAILED DC/66 TO ALL PARTIES**

Type: **COMMENT** Complaint No.:

Date: **07/01/2019** Comment: **JKT TO RR**

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