



## Expert Analysis

# Court Says Temple Had No Notice Of Fallen Eruv, Dismisses Trip Suit

**BY MARK FASS**

*Special to the New York Law Journal*

A QUEENS judge has thrown out a slip-and-fall case filed by a woman who allegedly tripped over a temple's "eruv" wire.

Eruvs, thin wires strung about 15 to 18 feet above ground, are used by Orthodox Jewish communities to create a symbolic walled courtyard in which the strictures against carrying things in public on the Sabbath are relaxed.

Supreme Court Justice Augustus C. Agate ruled that plaintiff Peggy Egar failed to establish that either Congregation Talmud Torah, which strung the wire, or co-defendant St. John's Episcopal Hospital, where the accident took place, had constructive notice of a recurrent dangerous condition.

"[P]laintiffs contend that a question of fact exists as to whether the eruv constitutes a dangerous condition because the eruv wire fell in a different location approximately one year prior to the accident, and that single incident gave defendants constructive notice of the hazard which caused [this] accident," Justice Agate wrote in *Egar v. Congregation Talmud Torah*, 2849/2006.

"The evidence relied upon by the plaintiffs of the single occurrence to raise a triable issue of fact is not suf-

ficiently time or site-specific to support a claim of constructive notice," the judge said.

New York City's Department of Transportation publishes an eight-page "Procedure Governing the Installation of Eruvs" for communities intending to erect the wires.

"The Eruv shall consist of an unadorned string, approximately of an inch in thickness," according to the guidelines. "The detailed plans and drawings must show that the Eruv will not hang lower than fifteen feet above the sidewalk and eighteen feet above the roadway."

Congregation Talmud Torah first put up its eruv in 1976, according to an attorney for the temple. Since then, the congregation has extended the length of the wire from approximately three miles to about seven miles.

Ms. Egar alleged that she suffered traumatic head injuries when she tripped over a fallen section of the eruv while exiting St. John's Episcopal Hospital's Far Rockaway teaching center in March 2003.

Under New York tort law, Ms. Egar had to demonstrate that the defendants either created the condition or had actual or constructive notice of the defect, the judge wrote.

Ms. Egar argued that the defendants' knowledge that the same wire had fallen in a different location a year earlier constituted constructive

notice of the danger.

Justice Agate disagreed, and threw out the case.

"[T]here is no evidence in the record that the defendants or their agents created an allegedly dangerous condition or that defendants were made aware of any such condition which could have caused plaintiff to trip and fall," he wrote.

"The single incident of the eruv falling a year before this incident certainly does not constitute evidence of a regularly recurring condition of which defendants must be aware. ...Moreover, no notice can be inferred where, as here, plaintiffs have failed to demonstrate that any prior complaints of the fallen eruv on March 31, 2003 were made known to the defendants."

Leonard F. Lesser and Renee Simon Lesser of Simon Lesser represented Congregation Talmud Torah. Ms. Lesser said the length of the eruv contributed to the temple's lack of notice.

"Part of our argument was that [the previous fallen wire] may have been in an entirely different location," she said.

Rose M. Day of Great Neck represented Ms. Egar. Ms. Day did not return a call for comment.