

NYCASE LAW SHORTS

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PRACTICE AREAS

PERSONAL INJURY

REAL ESTATE

Dangerous or Defective Condition/Question of Fact/Wooden Platform: Plaintiff was entering a door in a sauna when he fell over a wooden platform that was one and a half inches off the ground. Defendant moved for summary judgment arguing that the platform was not a defection condition. The Supreme Court, Queens County, denied and the Second Dept. sustained. The Court stated that generally, whether a condition is dangerous or defective is a question for the jury to decide. However, the defendant urged the Court to find the condition trivial as a matter of law. The Court reviewed the facts and stated that the defendant failed to establish a prima facie case. [Delaney v Town Sports Intl., 2011 NY Slip Op 06994, Appellate Division, Second Department, October 4, 2011](#)

Foreclosure/Standing/Assignment: Plaintiff/bank brought suit to foreclose a mortgage and moved for summary judgment. Defendant/owner moved to dismiss the case because Plaintiff did not possess the note and mortgage when the action was filed. The Supreme Court, Kings County denied Defendant's motion and granted summary judgment to Plaintiff. The Second Dept. reversed...“In order to commence a foreclosure action, a plaintiff must have a legal or equitable interest in the mortgage. A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced...”...“Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation”. Here, the Plaintiff submitted incomplete allonges to the Court and it did not have possession of the note prior to the commencement of the action. [Deutsche Bank Natl. Trust Co. v Barnett, 2011 NY Slip Op 06995, Appellate Division, Second Department, October 4, 2011](#)

New York Case Law Shorts by Johnny D. Hall. Questions or Comments? email: johnny@hallesq.com