

Defense Persuades Jury Claims in Tripping Case Were Fabricated

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Kristin Scepaniski v Montoya Condo Association and Mario Campos: A woman who claims she sustained a permanent arm injury after tripping over a ladder lying in uncut grass at her condominium complex was denied damages after defense lawyers persuaded a jury that her claims were most likely fabricated.

In August 2009, Kristin Scepaniski, 32, of Branford, claims she exited the back of her condo building in the Montoya Apartments, turned past her patio, walked around the fence, and then walked six or seven more steps before tripping over a 20-foot-long metal painters' extension ladder that was in a closed position in the grass.

Scepaniski claimed the grass was so high she couldn't see the ladder. The incident was not witnessed by anyone nor did the plaintiffs have any photos to illustrate how high the grass was.

"The story itself was somewhat hard to believe," said one of the defense lawyers in the case, Jonathan Chappell, of Rome McGuigan. "The grass was mowed weekly, so it seemed kind of incredible the grass would be so high you couldn't see the ladder." Chappell said Scapaniski went to her primary care doctor but did not mention how she injured her left arm. Within a month, she visited the Law Offices of Jonathan Perkins, and was ultimately represented by Jeffrey Lynch. Lynch declined comment for this article.

Soon, defense lawyers said, she began treatments with a neurologist and filed a lawsuit against both the Montoya Condo Association and Mario Campos, the painting contractor who owned the ladder. Scepaniski claimed to have sustained an ulnar nerve injury that causes her to be unable to or not be able to use three fingers on her left hand. She said she had injured the arm breaking her fall in the high grass.

David Sylvestre, of counsel at **Howard, Kohn, Sprague and Fitzgerald** in Hartford, defended the condo complex. Chappell defended Campos, the painter. The defense lawyers said the plaintiff's story kept changing throughout the pretrial process.

"This was a plaintiff we had to depose four times because at each deposition we thought we uncovered some new pre-existing relevant factors or some new previously undisclosed facts," **said Sylvestre**. "A great amount of important medical evidence was by court order [and] not standard disclosure."

Chappell said they eventually got the plaintiff to attend an independent medical exam ordered by the judge. The expert doctor opined that the woman was exaggerating her injury and that she had much better arm function than she was letting on.

Next, the defense lawyers hired a surveillance company to watch Scepaniski. The company ended up with a one-hour and 40-minute video of Scepaniski hanging out on her porch at her condo complex. The video was taken from a car in the parking lot.

"We were pleased when we got the film that it confirmed what we already knew," said Chappell. Scepaniski was sitting in the sun, talking to neighbors and using her hands as she expressed herself, the attorney said. At one one point, he said, she was holding a cup and a cigarette in the same hand that she claimed was largely disabled.

Despite the damning footage, the plaintiff sought \$180,000 before trial and asked the jury for \$295,000. The defense offered \$7,500 before the trial.

"Unfortunately, in Connecticut, we had to disclose the video to the plaintiff and could not maintain any element of surprise," said **Sylvestre**. He said the plaintiff claimed what was seen on the videotape was her just having "one good day."

Jury selection took two days, and was followed by several days of evidence presentation before New Haven Superior Court Judge **Robin Wilson**. The plaintiff's witnesses included the painter, a couple condo association representatives and Scepanski herself. Her medical records were also introduced. The defense had testimony from the doctor who conducted the independent examination and a videotaped deposition of a surgeon who claimed he fixed Scepanski's arm in 2009 after the injury. That doctor claimed that her injury was not consistent with how she said she fell on the ladder in the yard.

Following 35 minutes of deliberations, the jury sided with the defendants.

"The time, effort and money my clients had to expend to defend themselves from what was ultimately a zero dollar verdict speaks to the nature of testimony we uncovered in depositions and at trial," said **Sylvestre**.

The defense lawyer explained that initially his client, the condo association, had filed a third party indemnity action against painter Campos, claiming he was ultimately responsible for the incident since it was his ladder. However, defense attorneys **Sylvestre and Chappell agreed** to put that claim on hold in order to focus on the plaintiff's claim.

Chappell noted that the ladder wasn't even in the grass near Scepanski's condo that day, as Campos was painting in another area of the complex. He was blunt about the plaintiff's alleged accident: "I don't think it happened, frankly."

Sylvestre, meanwhile, said the defense lawyers' "united front" was crucial to their success in the case.

"Despite the plaintiff's masterful — one of the best I have heard in 25 years — narration of the effect on her life her injuries have had, despite extremely high permanent partial disability ratings, despite the plaintiff lawyer's crafty arguments to overcome the surveillance.... the jury came through in the end," said **Sylvestre**.