

WORKER/WORKPLACE NEGLIGENCE

Negligent Assembly or Installation — Premises Liability

Defense: Party's host liable for accident caused by falling pole**VERDICT** Defense**CASE** Frank Porcu v. Tam O'Shanter Club, Inc. and Great Neck Games & Productions, Inc., No. 5161/10**COURT** Nassau Supreme**JUDGE** Roy S. Mahon**DATE** 5/10/2013**PLAINTIFF****ATTORNEY(S)** Joel L. Levine, Levine and Wiss PLLC, Mineola, NY**DEFENSE****ATTORNEY(S)** Stuart G. Glass, White Fleischner & Fino, LLP, Mineola, NY (Great Neck Games & Productions Inc.)
Patricia K. Rech, Morenus, Conway, Goren & Brandman, Melville, NY (Tam O'Shanter Club Inc.)

FACTS & ALLEGATIONS On Oct. 25, 2009, plaintiff Frank Porcu, 68, a retiree, attended a Halloween party that was conducted in a banquet hall at the Tam O'Shanter Club country club, which is located at 74 Fruitledge Road, in Brookville. Decorations included a 60-pound, 8-foot-tall cast iron pole that was topped by a globe. During the course of the event, the globe fell off of its seating and landed on the head of Porcu's wife. Some 30 minutes later, the entire pole fell onto Mr. Porcu. Mr. Porcu claimed that he sustained an injury of his neck.

Porcu sued the country club's operator, Tam O'Shanter Club Inc., and the company that had provided the pole, Great Neck Games & Productions Inc. Porcu alleged that the country club's staff was negligent in its supervision of the party, that Great Neck Games & Productions was negligent in its installation of the pole, and that the defendants' negligence created a dangerous condition that led to his injury.

Porcu and Tam O'Shanter Club negotiated a settlement. Tam O'Shanter Club's insurer agreed to pay \$25,000. The matter proceeded to a trial against Great Neck Games & Productions.

Porcu's counsel claimed that the pole was located alongside a dance floor, in a setting in which adults were dancing and children were running. He contended that the pole should have been located away from pedestrian traffic. He also claimed that the pole was not secure. He contended that it was not attached to the floor and that it did not have an adequate base.

Porcu's counsel further claimed that Great Neck Games & Productions was immediately notified by telephone after the

accident involving Porcu's wife, and he argued that the first accident should have prompted the company's removal of the pole.

Great Neck Games & Productions failed to produce the pole for the trial. Judge Roy Mahon issued a charge of spoliation.

Defense counsel contended that the country club approved the manner in which the banquet hall was decorated, and he argued that Great Neck Games & Productions was not liable for any incident that occurred thereafter. He noted that the country club's staff removed the pole and other poles after Mr. Porcu's accident, and, as such, he argued that the club controlled the premises and could or should have removed the poles after the first accident. He claimed that Great Neck Games & Productions' work crew had left the premises prior to the party and could not have returned and removed the poles during the short amount of time that separated the two accidents.

Defense counsel further noted that Great Neck Games & Productions had provided similar decorations for four prior Halloween parties at the country club and never received a complaint or warning regarding safety. He referenced prior testimony in which the country club's manager indicated that she tested the pole after the first accident and deemed it sturdy.

INJURIES/DAMAGES *aggravation of pre-existing condition; arthritis; osteophyte; physical therapy; radiculopathy; trigger point injection*

The trial was bifurcated. Damages were not before the court.

Porcu claimed that his neck sustained trauma that aggravated pre-existing conditions: arthritis, osteophytes and radiculopathy. He underwent physical therapy and the administration of painkilling trigger-point injections, but he claimed that his pain persists. He contended that his condition will eventually require surgery. He also claimed that he requires painkillers and additional therapy.

Porcu sought recovery of future medical expenses and damages for past and future pain and suffering.

The defense's expert orthopedist submitted a report in which he opined that Porcu's injuries were degenerative conditions that predated the accident. Defense counsel contended that Porcu had undergone physical therapy and the administration of trigger-point injections prior to the accident and that the treatment addressed his pre-existing conditions.

RESULT The jury rendered a defense verdict. It found that Tam O'Shanter Club was liable for the accident.

DEMAND \$100,000 (from Great Neck Games & Productions)

OFFER None (Great Neck Games & Productions)

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 47 minutes
Jury Vote: 6-0