

**Pickford v Deleon**

2024 NY Slip Op 33987(U)

October 29, 2024

Supreme Court, Kings County

Docket Number: Index No. 522069/2019

Judge: Richard J. Montelione

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At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 29th day of October 2024.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

**DECISION AND  
ORDER AFTER  
INQUEST**

-----X  
DAVID PICKFORD and ROSEMARIE PICKFORD,

Plaintiffs,  
-against-

Index No.: 522069/2019  
Inquest Date: 10/19/2024

NOEL M. DELEON,

Defendant.

-----X

MONTELIONE, RICHARD J., J.

This is an action for personal injuries sustained by a New York City Fireman commenced by filing the summons and complaint on October 9, 2019. There is also a claim for loss of spousal services. It is alleged that during a fire on July 13, 2019, at 217 Arlington Avenue, Brooklyn, New York, which was owned, leased, operated, controlled and maintained by defendant, the defendant illegally altered the premises in violation of the Certificate of Occupancy and without permits or approvals for those alterations. It is further alleged that on or before July 13, 2019, there was a vacate order for the premises issued by the New York City Department of Buildings, but the premises was unsealed and unsecured.

This lawsuit is pursuant to General Municipal Law, § 205-a, 1-3 and alleges various violations of the Administrative Code of the City of New York, the Building Code of the City of New York, the Fire Code of the City of New York, New York City Health Code, the Housing Maintenance Code, Multiple Dwelling Law, and the New York State Property Maintenance Code.

Defendant was served by conspicuous service on November 29, 2019, which was filed on December 16, 2019. Plaintiffs moved by motion for default judgment which was filed on December 10, 2020. The court by order dated March 8, 2024, and entered on March 18, 2024, granted plaintiffs' motion for default judgment, and scheduled an inquest as to damages. The inquest was held on September 19, 2024, and plaintiff David Pickford (hereinafter, "plaintiff firefighter" or "plaintiff") testified.

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The following documents or affidavit was admitted into evidence.

Description	ID	admitted	Exhibit #
New York City Fire Department New York Incident Report dated July 13, 2019.....		x	1
Certified Medical Records of Eric Last, M.D., NHPP-Internal Medicine at Wantagh, Northwell Health (includes Kings County Hospital Records.....		x	2
Certified Medical Records of North Shore University Hospital.....		x	3
Certified Records of New York City Fire Department.....		x	4
Certified Business Records of New York City Fire Pension Fund...		x	5
Affidavit of David J. Dickoff, M.D., sworn to on September 16, 2024.....		x	6

The plaintiff firefighter testified that on July 13, 2019, he was assigned to Engine Company 293 and arrived at the subject premises because of an active fire. The fire started in the basement and quickly spread to the 1st and 2<sup>nd</sup> floor. The building is a brownstone 60 feet deep and 20 feet wide. Soon after arrival, the plaintiff firefighter was fully encapsulated in gear and entered the premises where after a period of more than one hour, he left the building and later learned he had suffered a stroke. Although plaintiff testified that it was his understanding that the fire was a result of arson, there is nothing found within any of the submitted records supporting this testimony. The New York City Fire Department Incident Report dated July 13, 2019, indicates the fire was under investigation.

The issue before the court is whether the plaintiff firefighter suffered damages “...for line-of-duty injuries caused by statutory or regulatory violations” (*Giuffrida*, 100 N.Y.2d at 77, 760 N.Y.S.2d 397, 790 N.E.2d 772),” see *Matter of Diegelman v City of Buffalo*, 28 NY3d 231, 238, 66 NE3d 673, 678, 43 NYS3d 803, 808 [2016]. See also *Gallagher v 109-02 Dev., LLC*, 137 AD3d 1073, 1075, 28 NYS3d 387, 389 [2d Dept 2016]:

General Municipal Law § 205-a(1) provides that a firefighter has a cause of action when he or she sustains an injury in the line of duty ‘as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments.’

See *Paolicelli v Fieldbridge Assoc., LLC*, 120 AD3d 643, 645, 992 NYS2d 60, 64 [2d Dept 2014]:

‘To establish a defendant’s liability under General Municipal Law § 205-a, a plaintiff firefighter must “identify the statute or ordinance with which the defendant failed to comply, describe the

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manner in which the firefighter was injured, and set forth those facts from which it may be inferred that the defendant's negligence directly or indirectly caused the harm to the firefighter" (*Clarke v. Drayton*, 83 A.D.3d 762, 762, 920 N.Y.S.2d 686, quoting *Zanghi v. Niagara Frontier Transp. Commn.*, 85 N.Y.2d 423, 441, 626 N.Y.S.2d 23, 649 N.E.2d 1167). The statute or ordinance identified must be part of a 'well-developed body of law and regulation' that imposes 'clear legal duties' or mandates the 'performance or nonperformance of specific acts' (*Vosilla v. City of New York*, 77 A.D.3d 649, 650, 909 N.Y.S.2d 462 [internal quotation marks omitted]; see *Galapo v. City of New York*, 95 N.Y.2d at 574, 721 N.Y.S.2d 857, 744 N.E.2d 685; *Mulham v. City of New York*, 110 A.D.3d 856, 857, 973 N.Y.S.2d 314; *Fahey v. A.O. Smith Corp.*, 77 A.D.3d 612, 617, 908 N.Y.S.2d 719).

The complaint specifies dozens of statutory violations (Complaint, ¶ 32), but the court will address the two brought up by plaintiffs at the inquest. The first is that the premises was under a vacate order and unsecured, and the second was arson. There is nothing in the complaint or record to indicate arson except for plaintiff's conclusory testimony, with an unknown basis. The record supports that a vacate order was in effect and the premises were unsecured.

#### Standard for Determining Inquest Damages

See *Gonzalez v Wu*, 131 AD3d 1205, 1206, 16 NYS3d 768 [2d Dept 2015]:

A defaulting defendant admits all traversable allegations in the complaint, including the basic issue of liability (see *Amusement Bus. Underwriters v American Intl. Group*, 66 NY2d 878, 880 [1985]; *Paulus v Christopher Vacirca, Inc.*, 128 AD3d 116, 126 [2015]; *Abbas v Cole*, 44 AD3d 31, 33 [2007]; *Suburban Graphics Supply Corp. v Nagle*, 5 AD3d 663 [2004]). The sole issue to be determined at an inquest is the extent of damages sustained by the plaintiff (see *Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 [1984]; *Taylor v Brooke Towers LLC*, 73 AD3d 535 [2010]). Here, the inquest court erred in considering the question of whether the defendant caused the damages sustained by the plaintiff (see *Kouho v Trump Vil. Section 4, Inc.*, 93 AD3d 761 [2012]; *Hussein v Ratcher*, 272 AD2d 446 [2000]; \*\*2 *Christian v Hashmet Mgt. Corp.*, 189 AD2d 597 [1993]; *Rich-Haven Motor Sales v National Bank of N.Y. City*, 163 AD2d 288, 290 [1990]).

The court is restrained by *Gonzalez v Wu*, *supra*, and therefore makes its determination premised on the cerebral vascular event (stroke) on July 13, 2019, as a matter of law, being a result of a fire caused by a statutory violation. The court has considered plaintiff's predisposition to suffering a stroke, plaintiff's general health, his habits, and his medical records, prior to and after suffering a stroke, the life tables, and defendant wife's loss of services.

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Based on the foregoing, it is

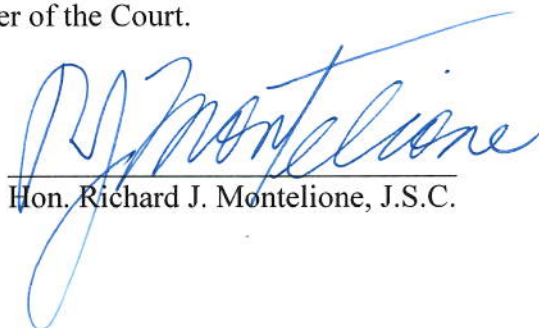
ORDERED that plaintiff David Pickford is awarded \$250,000.00 for past and future pain and suffering against Noel M. Deleon; and it is further

ORDERED that plaintiff ROSEMARIE PICKFORD is awarded \$125,000.00 for loss of past and future services against defendant Noel M. Deleon; and it is further

ORDERED that plaintiffs shall retrieve all the Inquest exhibits within 30 days of the entry of this decision and order after inquest or these records shall be deemed abandoned and shall be destroyed; and it is further

ORDERED that plaintiffs submit Judgment on Notice.

This constitutes the decision and order of the Court.



Hon. Richard J. Montelione, J.S.C.

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