

inspection for the safety of their invitees, licensees and guests, including Plaintiff, that the walkway leading to the shopping stalls was broken and collapsed and created a hazard and a dangerous condition to Plaintiff and other persons using the walkway, and that Plaintiff was permitted to use, and customarily would need to use, the walkway for ingress to and egress from the market. Defendant had a duty to keep and maintain the walkway in a safe condition and free from the unreasonable hazard of an open and dangerous hole.

6. On or about the date and time mentioned herein, August 23, 2008, Plaintiff slipped and fell on the walkway due to the condition of the said walkway. There was no marker warning pedestrians of the open and dangerous hole or barrier to keep pedestrians away from it, thereby affording Plaintiff inadequate opportunity to attempt to stop her fall.

7. Defendant negligently maintained the premises; Defendant had actual or constructive knowledge of said dangerous condition; Defendant failed to maintain the premises so that occupants could walk safely without a hazardous condition being present; Defendant failed to provide a safely marked walkway for Plaintiff to use as access to the premises; and Defendant failed to maintain the premises properly.

8. Defendant failed to warn Plaintiff of the dangerous condition.

9. At the time and place of the incident complained of herein, Defendant owed the Plaintiff a duty to maintain the property and access of entry and egress in a reasonably safe condition, to correct dangerous conditions of which the Defendant either knew or should have known by the use of reasonable care, and to warn the Plaintiff of any dangerous conditions of which the Defendant had or should have had knowledge.

10. Plaintiff's fall and resulting injuries were directly and proximately caused by the negligent acts of Defendant, in the following respects:

- A. Defendant failed to maintain the walkway in a safe and proper condition;
- B. Defendant failed to mark or fence off the walkway when Defendant knew or should have known that the hole in the walkway created a hazardous and dangerous condition

to Plaintiff and other users and Defendant failed to protect pedestrians such as Plaintiff from such a hazardous and dangerous condition;

C. Defendant failed to maintain the walkway as a safe means of ingress and egress for Plaintiff to use.

11. As a direct and proximate result of the negligence of the Defendant, the Plaintiff was injured.

12. As a further direct and proximate result thereof, Plaintiff has suffered injury to her arm and body, including a broken elbow, shock, pain, mental distress, loss of earnings, loss of enjoyment of life, and other damage and may continue to do so in the future.

13. The actions of Defendant, in allowing the broken and dangerously open walkway to be used by its customer/business invitee, Jean Lowell, was negligent.

14. Plaintiff does not propose to be bound by the specific allegations of negligence above, but further relies on the doctrine of *res ipsa loquitur*, that the parking lot where the farmer's market was operated was under the Defendant's control at the time of the incident; that no emergency occurred suddenly creating the dangerous and hazardous condition; that such a dangerous and hazardous condition in the manner and circumstances, as set forth herein, is not one that in the ordinary course of events occurs, if a person in control of the parking lot where the farmer's market was operated, exercises the care required by law towards the business invitee/customers making use of the farmers market. As such, the circumstances of the events afford sufficient evidence, in the absence of further explanation, that the Plaintiff's fall occurred as a result of the Defendant's breach of the duty of ordinary care to its patron/business invitee, and that such negligence/breach of the duty of ordinary care was the proximate cause of the incident and the injuries to the Plaintiff.

WHEREFORE, Plaintiff prays that judgment be entered against the Defendant in an amount which will fairly and adequately compensate Plaintiff for her injuries, medical treatment, damages and losses, past and future (including a broken elbow) and for whatever and further relief the Court and jury may deem just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated at Brattleboro, in the County of Windham, and State of Vermont, this 16 day of August, 2011.

Respectfully submitted,

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