

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

JACK CONRAD,
Plaintiff,

vs.

CASE NO. 18-CA-001329

THE BOAT HOUSE OF CAPE CORAL
LLC, and KEVIN CODE
Defendants.

_____/

ORDER GRANTING DEFENDANTS', THE BOAT HOUSE OF CAPE CORAL, LLC, AND
KEVIN CODE, MOTION FOR FINAL SUMMARY JUDGMENT AS TO LIABILITY

THIS CAUSE having come on for hearing on Defendants', The Boat House of Cape Coral and Kevin Code, Motion for Final Summary Judgment as to Liability, pursuant to notice, the Court having considered argument of counsel, and the Court being otherwise duly advised in the premises, the Court finds

1. The Plaintiff's deposition testimony revealed the Plaintiff's pontoon boat was tied to the cleats on posts on the sea wall at Defendant's place of business. Low tide had dropped the deck of the boat four (4) feet below the surface of the sea wall causing the ropes securing the boat to the posts to be too taut to untie from the cleats. Plaintiff intended to board his boat to untie the ropes from the boat itself. In attempting to do so, Plaintiff had to step down to the lower level of the sea wall as depicted in the photograph labeled Exhibit B attached hereto, step over the white pipe, hose, rope and debris which he admitted he saw on the day of the accident.

2. As Plaintiff was attempting to board his boat, he claimed he placed his left foot on the chipped edge of the sea wall (which he did not see), his right hand on top of the post and was going to step with his right foot onto the livewell in the front of the boat. The livewell is depicted in the photograph labeled Exhibit E attached hereto. As he pushed off to step onto the boat, his left foot “. . .slipped right off of it like a slide.” (Plaintiff’s deposition of April 29, 2019, page 54, line 19.) The chipped edge of the sea wall where Plaintiff alleged he placed his left foot is depicted in photographs labeled Exhibits B and C attached hereto. The edges of the sea wall at both levels of the dock are clearly marked with bright yellow paint. The chipped edge of the sea wall is clearly seen in both Exhibits B and C.

3. The chipped edge of the sea wall as seen in Exhibits B and C is clearly visible and was, or should have been obvious to the Plaintiff, as it was neither latent nor concealed, but was patent and obvious to ordinary observation and use of senses. *Sokoloff v. Oceania I Condo. Ass’n*, 201 So. 3d 664 (Fla. 3d DCA 2016), rev. denied, 2016 Fla. App. LEXIS 4475. See also *Spatz v. Embassy Home Care, Inc.*, 9 So. 3d 697 (Fla. 4th DCA 2009). As stated in *Brookie v. Winn Dixie Stores, Inc.*, 213 So. 3d 1129, 1133 (Fla. 1st DCA 2017):

[Thus,] while many decisions speak of the duty to warn and the duty to maintain premises in a reasonably safe condition as separate and distinct duties, for analytical purposes the duties are not mutually exclusive, as the open and obvious nature of a condition may preclude a finding of a breach of either duty, as a matter of law.


4. In light of the Court’s findings and ruling hereinbelow, the Court need not address whether this cause is governed by admiralty law so as to preclude any liability of the Defendants.

ACCORDINGLY, it is

ORDERED AND ADJUDGED that Defendants' Motion for Final Summary Judgment as to Liability shall be and the same is hereby GRANTED.

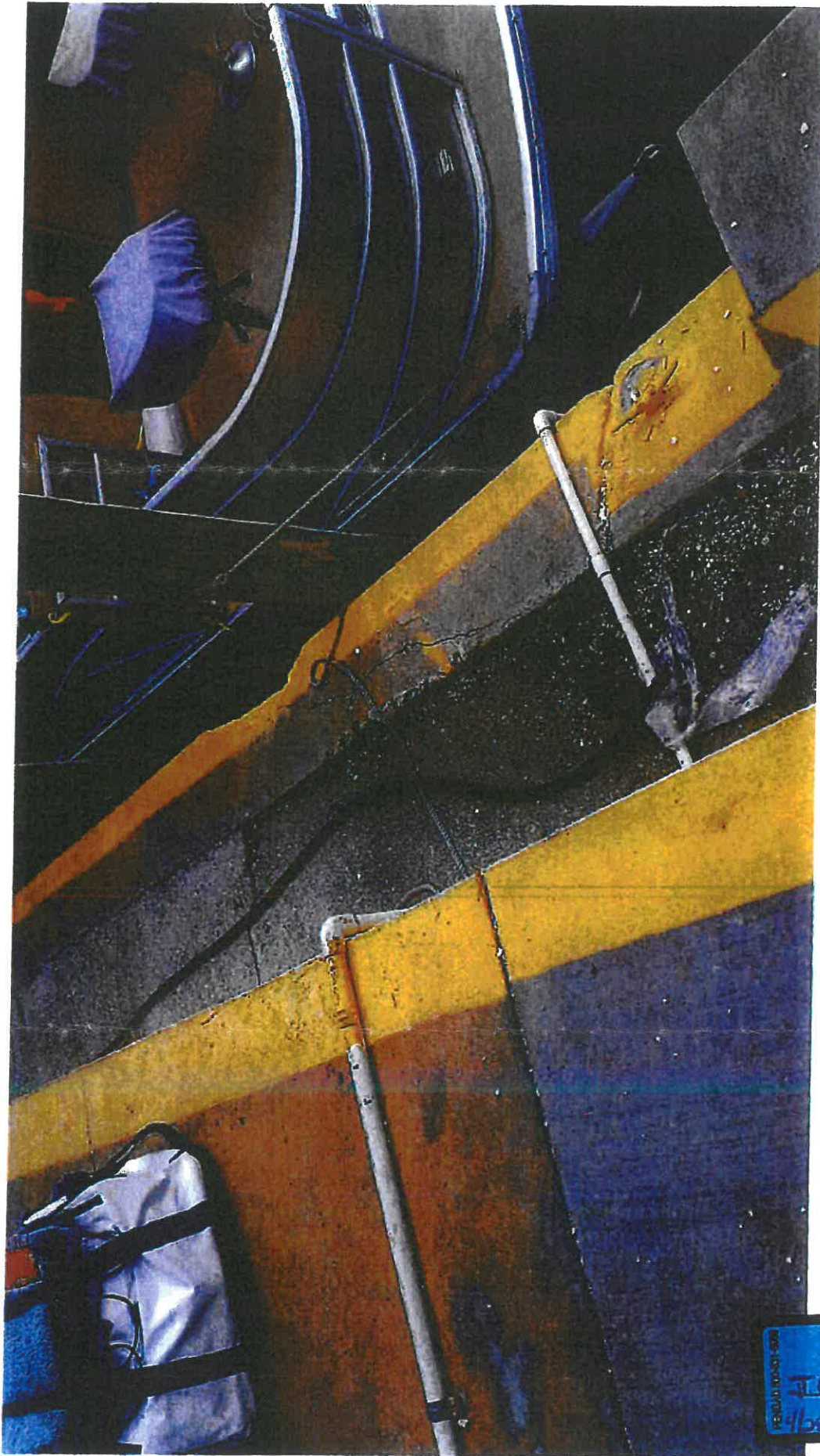
DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 21ST

Day of November, 2019.



Joseph C. Fuller, Jr.
CIRCUIT COURT JUDGE

cc: All counsel of record



PERIODI 10/01/2019
EXHIBIT **B**
J. Conrad
4/6/19 JED

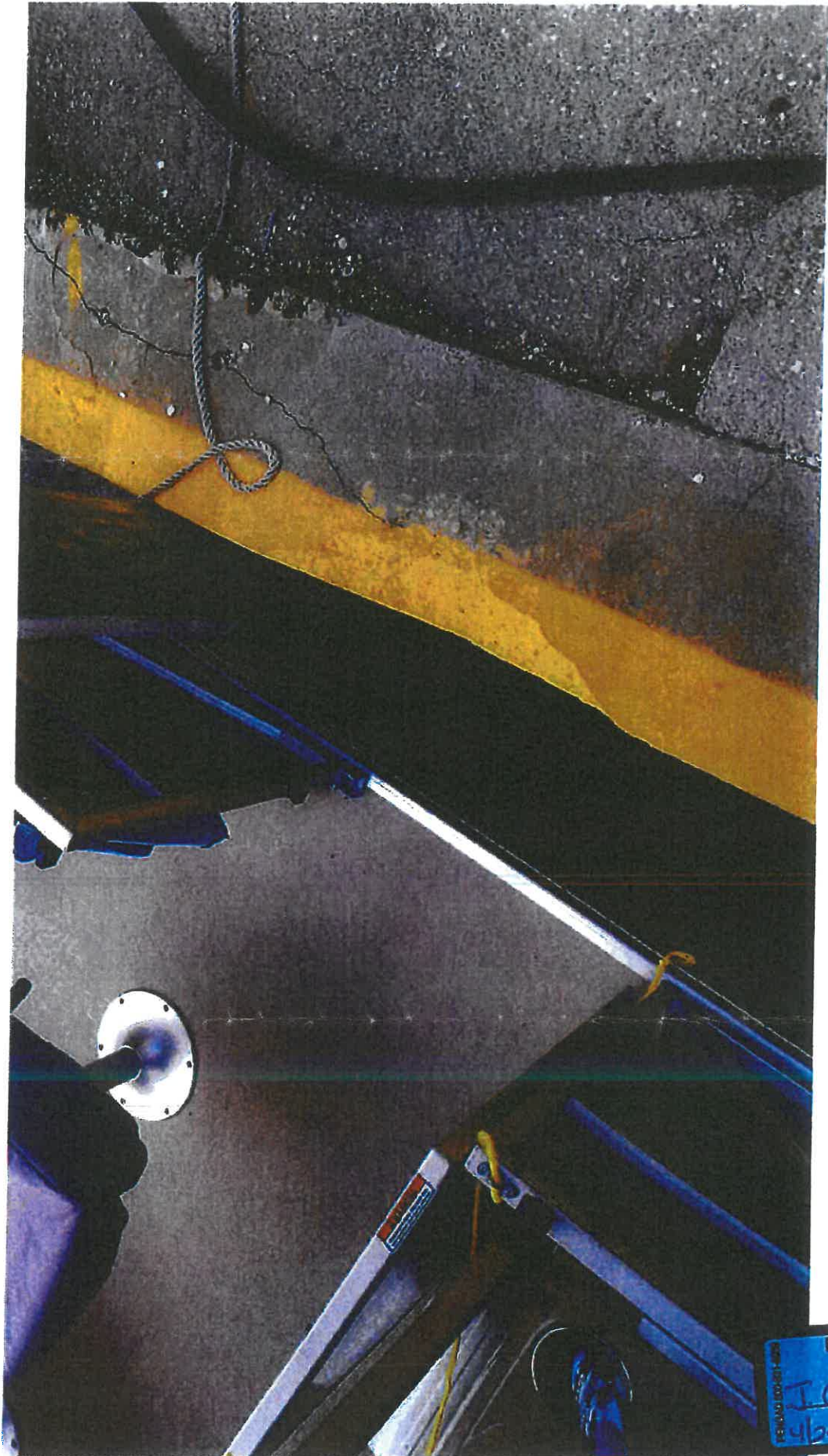


EXHIBIT C
I. Conced
4/29/19 BKD



EXHIBIT
J. Conrad
4/29/19 360