

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13627
G/cb

_____AD3d_____

Argued - December 7, 2006

STEPHEN G. CRANE, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2006-06672

DECISION & ORDER

Letitia McKinney, respondent, v Ardee Plaza, LLC,
appellant.

(Index No. 10966/04)

O'Connor, O'Connor, Hintz & Deveney, LLP, Melville, N.Y. (Michael T. Reagan of counsel), for appellant.

Halpern, Brown & Darienzo, Brooklyn, N.Y. (John A. Darienzo, Jr., of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Schneier, J.), dated June 9, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is granted.

On October 8, 2002, the plaintiff allegedly was injured when she fell on a loose rubber tread located on a staircase at a building owned by the defendant, which was leased to the plaintiff's employer. The lease provided that the owner was responsible for repair and maintenance of "public portions" of the building.

In support of its motion for summary judgment, the defendant adduced proof including, inter alia, the plaintiff's deposition testimony, which demonstrated prima facie that the alleged defective or dangerous condition did not exist in the location at the time of the plaintiff's

alleged fall at the defendant's premises (*see Tenenbaum v Best 21 Ltd.*, 15 AD3d 646; *Mansueto v Worster*, 1 AD3d 412, 413; *Tresgallo v Danica*, 286 AD2d 326). In opposition, the plaintiff failed to raise a triable issue of fact (*see Leib v Silo Rest.*, 26 AD3d 359, 360; *Mansueto v Worster, supra*; *Varrone v Dinaro*, 209 AD2d 508, 509).

Moreover, the plaintiff failed to demonstrate the existence of any question of fact as to whether the defendant had actual or constructive notice.

Accordingly, the Supreme Court erred in denying the defendant's motion for summary judgment dismissing the complaint (*see Lieb v Silo Rest. supra*; *Mansueto v Worster, supra*; *Varrone v Dinaro, supra*; *see also Pena v Women's Outreach Network*, 35 AD3d 104; *DeRosa v City of New York*, 30 AD3d 323, 327; *Garcia v The Jesuits of Fordham*, 6 AD3d 163, 166).

CRANE, J.P., SKELOS, LIFSON and DILLON, JJ., concur.

ENTER:


James Edward Felger
Clerk of the Court