

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

D14424
G/hu

_____AD3d_____

Submitted - February 20, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
MARK C. DILLON, JJ.

2006-03505

DECISION & ORDER

Helena McKenzie, appellant, v County of
Westchester, et al., respondents.

(Index No. 694/05)

Anthony J. Scarcella & Associates, P.C., White Plains, N.Y. (M. Sean Duffy of
counsel), for appellant.

Nesci Keane Piekarski Keogh & Corrigan, White Plains, N.Y. (Jason M.
Bernheimer of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Westchester County (Murphy, J.), entered March 10, 2006, which
granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

While attempting to disembark a bus owned and operated by the defendants, the
plaintiff slipped on a step which she described as wet and slushy, and fell from the bus. It is
undisputed that a heavy snow had fallen several days earlier and that passengers were tracking snow,
slush, and water from the ground onto the bus. After the plaintiff commenced this action to recover
damages for personal injuries allegedly sustained by her in the accident, the defendants moved for
summary judgment, claiming, inter alia, that the accident was not the result of any breach of a duty
on their part.

March 27, 2007

Page 1.

McKENZIE v COUNTY OF WESTCHESTER

The defendants established their prima facie entitlement to summary judgment (*see Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067). The evidence submitted by the defendants, including the plaintiff's deposition testimony and that of the bus driver, established that the defendants did not breach a duty owed to the plaintiff since, under the weather conditions which existed at the time of the accident, "[i]t would be unreasonable to expect the defendant[s] to constantly clean the floor[s] of [their] buses" (*Spooner v New York City Tr. Auth.*, 298 AD2d 575, 575-576; *see Hussein v New York City Tr. Auth.*, 266 AD2d 146, 146-147). The evidence submitted by the plaintiff in opposition to the motion failed to raise a triable issue of fact (*see CPLR 3212[b]; Zuckerman v City of New York*, 49 NY2d 557, 562; *Indig v Finkelstein*, 23 NY2d 728, 729).

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court