

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

D18925
X/prt

_____AD3d_____

Submitted - March 20, 2008

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-05155

DECISION & ORDER

John Espada, et al., appellants, v Mid-Island
Babe Ruth League, Inc., respondent.

(Index No. 102382/05)

Chelli & Bush, Staten Island, N.Y. (Laurel A. Wedinger of counsel), for appellants.

Faust Goetz Schenker & Blee LLP, New York, N.Y. (Lisa L. Gokhulsingh of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (McMahon, J.), dated April 11, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff John Espada fell and was injured in a parking lot owned and operated by the defendant. Thereafter, he and his wife, derivatively, sued the defendant alleging, in effect, that he fell because the parking lot was constructed and maintained in an unsafe condition. The Supreme Court granted the defendant's motion for summary judgment dismissing the complaint and we affirm.

The defendant established its entitlement to judgment as a matter of law by submitting evidence sufficient to demonstrate that the condition complained of by the plaintiffs was open and obvious, known to the injured plaintiff, and not inherently dangerous. In opposition, the plaintiffs failed to submit evidence sufficient to raise a triable issue of fact (*see Basso v Miller*, 40 NY2d 233, 241; *Comack v VBK Realty Assoc.*, 48 AD3d 611; *Cupo v Karfunkel*, 1 AD3d 48, 52; *see generally Rao-Boyle v Alperstein*, 44 AD3d 1022; *cf. Hogan v Baker*, 29 AD3d 740). Accordingly, the

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Supreme Court properly granted the motion for summary judgment (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

MASTRO, J.P., SANTUCCI, ENG and BELEN, JJ., concur.

ENTER:


James Edward Helges
Clerk of the Court