

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

D19387
G/prt

_____AD3d_____

Argued - April 22, 2008

ROBERT A. LIFSON, J.P.
DAVID S. RITTER
MARK C. DILLON
JOHN M. LEVENTHAL, JJ.

2007-04745

DECISION & ORDER

Dwight Christal, et al., appellants, v Ramapo Cirque
Homeowners Assoc., et al., respondents.

(Index No. 4041/05)

Fredric Lewis, New York, N.Y., for appellant.

Callan, Koster, Brady & Brennan, LLP, New York, N.Y. (Michael P. Kandler and
Veronica M. Wayner), for respondents Ramapo Cirque Homeowners Assoc., and
Arco/Wentworth Management Co.

O'Connor, O'Connor, Bresee & First, P.C., Albany, N.Y. (Alexander Powhida of
counsel), for respondent Grasskeepers Landscaping, Inc.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Rockland County (Berliner, J.), dated April 18, 2007, as granted those branches of the motion of the defendants Ramapo Cirque Homeowners Assoc. and Arco/Wentworth Management Co. and the cross motion of the defendant Grasskeepers Landscaping, Inc., which were for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

The defendants made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that they neither created nor had actual or constructive notice of the patch of "black ice" on which the plaintiff Dwight Christal allegedly slipped and fell (*see Robinson v Trade*

May 20, 2008

Page 1.

CHRISTAL v RAMAPO CIRQUE HOMEOWNERS ASSOC.

Link Am., 39 AD3d 616, 616-617; *Makaron v Luna Park Hous. Corp.*, 25 AD3d 770; *Murphy v 136 N. Blvd. Assoc.*, 304 AD2d 540). In response, the plaintiffs failed to raise a triable issue of fact as to whether the ice was the result of improper snow removal (see *Robinson v Trade Link Am.*, 39 AD3d at 617; *Zabbia v Westwood, LLC*, 18 AD3d 542, 544; *Ravina v Incorporated Town of Greenburgh*, 6 AD3d 688, 689). Additionally, the plaintiffs presented no evidence that the defendants had received any complaints about the ice patch, or that it was visible and apparent and had existed for a sufficient length of time before the accident for the defendants to discover and remedy it (see *Gjoni v 108 Rego Dev. Corp.*, 48 AD3d 514; *Murphy v 136 N. Blvd. Assoc.*, 304 AD2d at 540-541). Accordingly, the Supreme Court properly granted those branches of the defendants' motion and cross motion which were for summary judgment dismissing the complaint insofar as asserted against them (see generally *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

LIFSON, J.P., RITTER, DILLON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court