

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

D21462
O/kmg

_____AD3d_____

Submitted - November 18, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2008-02099

DECISION & ORDER

Arlene Terranova, respondent,
v Staten Island University Hospital, appellant.

(Index No. 102003/06)

Patrick F. Adams, P.C., Bayshore, N.Y. (Frank Cali and Gary A. Pagliarello of counsel), for appellant.

Ameduri, Galante & Friscia, Staten Island, N.Y. (Marvin Ben-Aron of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Richmond County (McMahon, J.), dated January 29, 2008, 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.

A landowner is under no duty to protect or warn against an open and obvious condition, which, as a matter of law, is not inherently dangerous (*see Fitzgerald v Sears, Roebuck & Co.*, 17 AD3d 522; *Orlando v Audax Constr. Copr.*, 14 AD3d 500; *Capozzi v Huhne*, 14 AD3d 474; *Jang Hee Lee v Sung Whun Oh*, 3 AD3d 473; *Cupo v Karfunkel*, 1 AD3d 48). Here, the plaintiff allegedly was injured when she tripped on the footrest of a wheelchair in a hospital room. The defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that the presence of the wheelchair was open and obvious, known to the plaintiff, and not inherently

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dangerous (*see Mastellone v City of New York*, 29 AD3d 540; *Fitzgerald v Sears, Roebuck & Co.*, 17 AD3d at 522; *Weiner v Saks Fifth Ave.*, 266 AD2d 390; *Lamia v Federated Dept. Stores*, 263 AD2d 498; *Sewer v Fat Albert's Warehouse*, 235 AD2d 414). In opposition, the plaintiff failed to submit evidence sufficient to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

SPOLZINO, J.P., FLORIO, CARNI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court