

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

D24115  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 22, 2009

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

2008-06106

DECISION & ORDER

Denise Marchetti, etc., appellant, v Giuseppe  
Modica, et al., respondents.

(Index No. 1686/06)

Mark E. Weinberger, P.C., Rockville Centre, N.Y. (Marc J. Musman of counsel), for  
appellant.

Camacho Mauro Mulholland, LLP, New York, N.Y. (Kathleen M. Mulholland of  
counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiff appeals from  
an order of the Supreme Court, Queens County (Elliot, J.), dated May 14, 2008, which granted the  
defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendants established, prima facie, their entitlement to judgment as a matter of  
law by demonstrating that the placement of furniture at the site of the subject accident was open and  
obvious and not inherently dangerous (*see Neiderbach v 7-Eleven, Inc.*, 56 AD3d 632, 633;  
*Gagliardi v Walmart Stores, Inc.*, 52 AD3d 777; *Espinoza v Hemar Supermarket, Inc.*, 43 AD3d  
855; *Bernth v King Kullen Grocery Co., Inc.*, 36 AD3d 844; *Cupo v Karfunkel*, 1 AD3d 48;  
*Maravalli v Home Depot U.S.A.*, 266 AD2d 437). In opposition, the plaintiff failed to submit  
evidence sufficient to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).

SKELOS, J.P., SANTUCCI, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

September 15, 2009

MARCHETTI v MODICA