

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

D25482
Y/prt

_____AD3d_____

Argued - November 13, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-05857

DECISION & ORDER

Maria Bizzoco, appellant, v County of Westchester,
et al., defendants, City of Rye, respondent
(and a third-party action).

(Index No. 15676/04)

Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola, N.Y. (Mark R. Bernstein of counsel), for appellant.

Joseph A. Maria, P.C., White Plains, N.Y. (Edward A. Frey of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Nastasi, J.), entered May 14, 2008, which, upon a jury verdict on the issue of liability, is in favor of the defendant City of Rye and against her, dismissing the complaint insofar as asserted against that defendant.

ORDERED that the judgment is affirmed, with costs.

The plaintiff was injured when she fell while descending a staircase in a park owned by the defendant City of Rye. The plaintiff commenced this action to recover damages for personal injuries and, at trial, she argued that the City's negligent failure to install a handrail on the staircase caused the accident. A jury returned a verdict in which it found that the City was negligent, but that its negligence was not a substantial factor in causing the plaintiff's accident.

Contrary to the plaintiff's contention, the evidence adduced at trial did not warrant

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instructing the jury under PJI3d 2:71 as to concurrent causes (*see Rodriguez v Budget Rent-A-Car Sys., Inc.*, 44 AD3d 216, 220). The Supreme Court's charge, as a whole, conveyed the applicable legal principles and sufficiently instructed the jury as to the law of proximate cause (*see Blum v Cain*, 38 AD3d 701; *Fricker v New York City Off Track Betting Corp.*, 213 AD2d 590, *cert denied* 516 US 1114; *Scandell v Salerno*, 155 AD2d 523).

The plaintiff's remaining contentions are without merit.

COVELLO, J.P., SANTUCCI, CHAMBERS and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court