

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

D25775
W/kmg

_____AD3d_____

Argued - December 15, 2009

STEVEN W. FISHER, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2009-00205

DECISION & ORDER

Gael Sutter, appellant, v Wakefern Food Corp.,
d/b/a Shoprite Supermarket, respondent.

(Index No. 5706/02)

Levine & Slavit, New York, N.Y. (Leonard S. Slavit of counsel), for appellant.

McKeegan & Shearer, P.C., New York, N.Y. (Douglas Shearer of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Rockland County (Garvey, J.), entered November 20, 2008, which granted the defendant's motion for summary judgment dismissing the complaint and, in effect, denied, as academic, her separate motion for the admission, pro hac vice, of Florida attorney Antoinette R. Appel to appear on her behalf as co-counsel in this action.

ORDERED that the order is reversed, on the law, with costs, the defendant's motion for summary judgment dismissing the complaint is denied, and the plaintiff's motion for the admission, pro hac vice, of Florida attorney Antoinette R. Appel to appear on her behalf as co-counsel in this action is granted.

The plaintiff alleged that, as she retrieved a box of dry cereal from a display at the defendant's supermarket, she was struck in the head by an object. She alleged that the display was stacked too high above the floor for stability, and that she saw several boxes of the cereal on the ground after she was struck in the head.

The plaintiff commenced this action against the defendant in 2002. In an amended order dated October 6, 2005, the Supreme Court denied the defendant's motion for summary judgment dismissing the complaint. In an order dated August 18, 2006, the Supreme Court denied the defendant's motion for leave to renew, on both a "procedural and substantive basis." In July 2008 the defendant again moved for summary judgment dismissing the complaint. The plaintiff then separately moved for the admission, pro hac vice, of Florida attorney Antoinette R. Appel to appear on her behalf as co-counsel in this action. The Supreme Court granted the defendant's motion and, in effect, denied the plaintiff's motion as academic.

Generally, successive motions for summary judgment should not be entertained, absent a showing of newly-discovered evidence or other sufficient cause (*see Kimber Mfg., Inc. v Hanzus*, 56 AD3d 615; *Crane v JAB Realty, LLC*, 48 AD3d 504; *Williams v City of White Plains*, 6 AD3d 609; *Davidson Metals Corp. v Marlo Dev. Co.*, 262 AD2d 599). Here, the Supreme Court should not have entertained the defendant's latest motion for summary judgment dismissing the complaint since the defendant did not submit any newly-discovered evidence, or present other sufficient cause (*see Kimber Mfg., Inc. v Hanzus*, 56 AD3d 615; *Selletti v Liotti*, 45 AD3d 669; *Williams v City of White Plains*, 6 AD3d 609; *Davidson Metals Corp. v Marlo Dev. Co.*, 262 AD2d 599).

The plaintiff's motion for the admission, pro hac vice, of Florida attorney Antoinette R. Appel to appear on her behalf as co-counsel in this action should have been granted (*see* 22 NYCRR 520.11[a]).

FISHER, J.P., MILLER, ENG and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court