

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

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_____AD3d_____

Argued - December 8, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2008-09485

DECISION & ORDER

Amarjeet Gujral, appellant, v Wal-Mart Stores, Inc.,
respondent.

(Index No. 15607/07)

Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., of counsel), for
appellant.

Brody, O'Connor & O'Connor, Northport, N.Y. (Patricia A. O'Connor, Thomas M.
O'Connor, and Joseph Minasi of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Nassau County (Murphy, J.), dated September 30, 2008, which granted
the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's
motion for summary judgment dismissing the complaint is denied.

The plaintiff sustained personal injuries when an unsecured, six-foot tall, aluminum
ladder in the houseware section of the defendant's store fell on her. After joinder of issue, the
defendant moved for summary judgment dismissing the complaint, on the ground that it did not create
or have actual or constructive notice of the defective condition (*see Starling v Suffolk County Water
Auth.*, 63 AD3d 822). In support of its motion, the defendant submitted, inter alia, the deposition
testimony of store employee Carlos Manrique, the first employee to provide assistance to the plaintiff
following the accident. Manrique testified that the store's ladders were to be used only by store
employees and that, when not being used, the ladders were supposed to be secured by storing them

on a hook. The defendant failed to eliminate all material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324) as to whether the ladder had been left in an unsecured manner by one of the store's employees. Under these circumstances, it is unnecessary to consider the sufficiency of the plaintiff's opposition papers (*see Tchjevskiaia v Chase*, 15 AD3d 389).

Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint.

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court