

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

D26031
G/kmg

_____AD3d_____

Argued - December 21, 2009

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-01483

DECISION & ORDER

Margaret Fotiatis, appellant, v Cambridge Hall
Tenants Corp., respondent.

(Index No.1238/07)

Duffy & Duffy, Uniondale, N.Y. (Mary Ellen Duffy and James N. LiCalzi of counsel),
for appellant.

Thomas D. Hughes, New York, N.Y. (Richard C. Rubinstein 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 (Feinman, J.), entered December 16, 2008, which
granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant submitted evidence sufficient to establish, prima facie, that it did not
create the condition that proximately caused the plaintiff's injuries (*cf. Shindler v Warf*, 66 AD3d
762). The plaintiff fell on a public roadway adjacent to the defendant's premises. She allegedly
slipped and fell on a portion of a torn garbage bag and/or a banana peel protruding therefrom, that
was hanging over the curb into the roadway. The plaintiff alleged that the material was caused to be
in the roadway as a consequence of the manner in which the defendant stacked garbage bags on the
sidewalk.

"Where the moving party has established prima facie that it is entitled to summary
judgment, the party opposing the motion must demonstrate the existence of a factual issue requiring

a trial of the action by admissible evidence, not mere conjecture, suspicion, or speculation” (*Leggio v Gearhart*, 294 AD2d 543, 544; see *Zuckerman v City of New York*, 49 NY2d 557, 562). The plaintiff failed to demonstrate the existence of a triable issue of fact (see *Xhika v Trizechan Regional Pooling, LLC*, 49 AD3d 719, 720; *Grob v Kings Realty Assoc.*, 4 AD3d 394; *Teplitskaya v 3096 Owners Corp.*, 289 AD2d 477, 478; *Deegan v 336 E. 50th St. Tenants Corp.*, 216 AD2d 59). The affidavit of the plaintiff’s expert in opposition to the motion was speculative and conclusory, and his opinion was not supported by empirical data or any relevant industry standard. Accordingly, the expert’s affidavit was not sufficient to raise a triable issue of fact (see *Ghany v Hossain*, 65 AD3d 517; *Rivas-Chirino v Wildlife Conservation Socy.*, 64 AD3d 556, 568; *Gover v Mastic Beach Prop. Owners Assn.*, 57 AD3d 729, 731).

The plaintiff’s remaining contention is without merit.

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

ENTER:



James Edward Pelzer
Clerk of the Court