

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

D26052
O/kmg

_____AD3d_____

Argued - January 15, 2010

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2009-08275

DECISION & ORDER

Taiesha S. Douse, plaintiff-respondent, v City of New York, et al., defendants-respondents, Green Bus Lines, Inc., appellant.

(Index No. 5494/07)

Fiedelman & McGaw, Jericho, N.Y. (Dawn C. DeSimone of counsel), for appellant.

Weitz & Luxenberg, P.C., New York, N.Y. (Stuart R. Friedman and Daniel Horner of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendant Green Bus Lines, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Rosengarten, J.), dated July 6, 2009, as denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion of the defendant Green Bus Lines, Inc., for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted.

The defendant Green Bus Lines, Inc. (hereinafter Green Bus), established its prima facie entitlement to judgment as a matter of law by demonstrating, through the submission of the plaintiff's deposition testimony, that the plaintiff did not know the cause of her alleged fall (*see Morgan v Windham Realty, LLC* 68 AD3d 828; *Cangro v Noah Bldrs., Inc.*, 52 AD3d 758, 759; *Golba v City of New York*, 27 AD3d 524; *Israel v Fairharbor Owners, Inc.*, 20 AD3d 392; *Sheffield v Joseph*, 4 AD3d 522, 523). In opposition to the motion, the plaintiff failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Her assertion that a "piece of

metal sticking out of the concrete” caused her to fall was based on speculation. In this regard, the plaintiff stated that, the “first time” that she observed the “piece of metal” was approximately one month after the alleged incident, when she returned to the scene with her attorney. A trier of fact would be required to base its finding of proximate cause on pure speculation (*see Morgan v Windham Realty, LLC*, 68 AD3d 828; *Golba v City of New York*, 27 AD3d 524; *Tejada v Jonas*, 17 AD3d 448). Accordingly, the Supreme Court should have granted the motion by Green Bus for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

RIVERA, J.P., DICKERSON, CHAMBERS and HALL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court