

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

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_____AD3d_____

Argued - February 2, 2010

PETER B. SKELOS, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2009-07716

DECISION & ORDER

Lena Carpenter, respondent, v 130 W. Merrick, Inc.,
et al., appellants.

(Index No. 15003/07)

Epstein, Frankini & Grammatico, Woodbury, N.Y. (Michele A. Musarra of counsel),
for appellants.

Larry Dorman, P.C., Astoria, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Markey, J.), dated June 12, 2009, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly tripped and fell over a box containing merchandise which was placed on the floor, at the end of an aisle, in the defendants' store. Under the circumstances, the Supreme Court properly denied the defendants' motion for summary judgment, since the defendants failed to make a prima facie showing of entitlement to judgment as a matter of law (*see Naletilic v Dan's Key Food*, 47 AD3d 903; *Rivera v YMCA of Greater New York*, 37 AD3d 579, 580; *Westbrook v WR Activities-Cabrera Mkts.*, 5 AD3d 69; *see also Greenstein v R & R of G.C., Inc.*, 50 AD3d 637).

SKELOS, J.P., FLORIO, HALL and AUSTIN, JJ., concur.

ENTER:


James Edward Pelzer

March 9, 2010

CARPENTER v 130 W. MERRICK, INC.

Clerk of the Court

March 9, 2010

CARPENTER v 130 W. MERRICK, INC.