

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

D27977
H/prt

_____AD3d_____

Argued - April 19, 2010

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2009-03279

DECISION & ORDER

Gulshen Kurtishi, et al., appellants, v Central
Hudson Gas & Electric Corporation, respondent,
et al., defendant.
(Action No. 1)

Gulshen Kurtishi, et al., appellants, v Patrick Page,
et al., defendants, Asplundh Tree Expert Co.,
respondent.
(Action No. 2).

(Index Nos. 5056/05, 8170/07)

Hagan, Coury & Associates, Brooklyn, N.Y. (Paul Golden of counsel), for appellants.

Lavin, O'Neil, Ricci, Cedrone & DiSipio, New York, N.Y. (Francis F. Quinn of
counsel), for respondents (one brief filed).

In related actions to recover damages for personal injuries, etc., which were joined for
trial, the plaintiffs appeal from an order of the Supreme Court, Dutchess County (Dolan, J.), dated
March 11, 2009, which granted the motion of the defendants Central Hudson Gas & Electric
Corporation and Asplundh Tree Expert Co. for summary judgment dismissing the complaint in Action
No. 1 insofar as asserted against the defendant Central Hudson Gas & Electric Corporation and
dismissing the complaint in Action No. 2 insofar as alleged against the defendant Asplundh Tree
Expert Co.

June 22, 2010

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KURTISHI v PAGE

ORDERED that the order is affirmed, with costs.

The plaintiff Gulshen Kurtishi claims that she was injured in a fall after allegedly receiving an electric shock when power lines were downed after a tree branch between two utility poles fell upon the wires. The plaintiff and her husband, suing derivatively, commenced this action against, among others, Central Hudson Gas & Electric Corporation (hereinafter Hudson), which owned and operated the subject utility poles, and Asplundh Tree Expert Co. (hereinafter Asplundh), the company hired by Hudson to trim trees around the power lines in that location. The Supreme Court granted the motion by Hudson and Asplundh for summary judgment. We affirm.

Hudson established its prima facie entitlement to judgment as a matter of law by submitting proof that at the time the incident allegedly occurred, the plaintiff was located at such a distance from where the wires were downed that any electric conductivity which may have remained in such wires would not have affected her. In opposition, the plaintiff's speculation as to how she may have been shocked was insufficient to raise a triable issue of fact (*see generally, Mejia v Era Realty Co.*, 69 AD3d 816; *Hunt v Meyers*, 63 AD3d 685; *Martinez v Melendez*, 32 AD3d 999).

Additionally, Asplundh established its prima facie entitlement to judgment as a matter of law by demonstrating that its tree trimming operations in the subject location were not negligently performed (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). In opposition, the plaintiff failed to raise a triable issue of fact.

The plaintiff's remaining contentions either are without merit or do not warrant a different result.

SKELOS, J.P., SANTUCCI, LEVENTHAL and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court