

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

D28608
H/kmg

_____AD3d_____

Submitted - September 24, 2010

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2009-07790

DECISION & ORDER

Edna Bennett, respondent, v Commercial
Flooring Specialists, Ltd., appellant.

(Index No. 28371/07)

Martyn, Toher & Martyn, Mineola, N.Y. (Frank P. Toher of counsel), for appellant.

Abbott Bushlow & Schechner, LLP, Ridgewood, N.Y. (Richard Schechner of
counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), entered July 16, 2009, which denied its 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 granted.

The plaintiff commenced this action alleging that the defendant, or its purported agent, nonparty A.C. Floors, Inc. (hereinafter AC Floors), during the course of installing carpeting at the plaintiff's place of employment, negligently stacked plastic floor mats near a copy machine, over which the plaintiff tripped and fell.

The defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that it did not stack the plastic floor mats and that, if AC Floors stacked the mats, that AC Floors was not its employee, but rather, was an independent contractor (*see Metling v Punia & Marx*, 303 AD2d 386, 387-388; *Abouzeid v Grgas*, 295 AD2d 376, 377; *Mercado v Slope Assoc.*,

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246 AD2d 581; *see generally Kleeman v Rheingold*, 81 NY2d 270, 273). In opposition, the plaintiff failed to raise a triable issue of fact (*see Stock v Otis El. Co.*, 52 AD3d 816, 816-817; *Abouzeid v Grgas*, 295 AD2d at 378). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., SKELOS, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court