

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

D29680  
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Submitted - December 17, 2010

MARK C. DILLON, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

2010-01590

DECISION & ORDER

Pamela Collins, respondent, v 5840 Merrick Road  
Realty Corp., et al., appellants.

(Index No. 11789/07)

Hammill, O'Brien, Croutier, Dempsey, Pender & Koehler, P.C., Syosset, N.Y.  
(Maureen Quinn of counsel), for appellants.

Siben and Siben, LLP, Bay Shore, N.Y. (Alan G. Faber of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated January 13, 2010, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

Viewing the evidence in the light most favorable to the plaintiff (*see Martinez v Khaimov*, 74 AD3d 1031; *Rivera v YMCA of Greater N.Y.*, 37 AD3d 579), the defendants failed to establish, prima facie, that they did not create the alleged hazardous condition or have actual or constructive notice of it (*see Edwards v Great Atl. & Pac. Tea Co., Inc.*, 71 AD3d 721; *Perlongo v Park City 3 & 4 Apts., Inc.*, 31 AD3d 409). The conflicting evidence submitted by the defendants concerning the facts surrounding the accident raised a triable issue of fact regarding whether the defendants had notice of the alleged hazardous condition (*see generally Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910; *Lawson v Rutland Nursing Home, Inc.*, 65 AD3d 572; *Kolivas v Kirchoff*, 14 AD3d 493). Since the defendants failed to meet their initial burden as the movants, we need not review the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*,

January 11, 2011

Page 1.

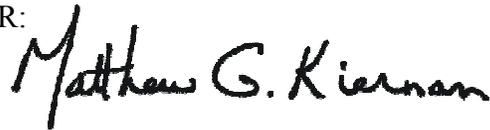
COLLINS v 5840 MERRICK ROAD REALTY CORP.

64 NY2d 851; *Britto v Great Atl. & Pac. Tea Co., Inc.*, 21 AD3d 436; *Joachim v 1824 Church Ave., Inc.*, 12 AD3d 409).

Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court