

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

D29883
C/prt

_____AD3d_____

Submitted - January 7, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2010-02260

DECISION & ORDER

Yitzchok Simkowitz, etc., et al., appellants, v
Congregation Machzikei Torah, respondent.

(Index No. 280/08)

Barr, Post & Associates, PLLC, Spring Valley, N.Y. (Craig A. Post of counsel), for appellants.

Thomas K. Moore, White Plains, N.Y. (Christopher R. Ingrassia of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Rockland County (Berliner, J.), entered January 12, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established its prima facie entitlement to judgment as a matter of law by submitting, inter alia, the deposition testimony of the injured plaintiff that he was unable to identify the cause of his fall (*see Murphy v New York City Tr. Auth.*, 73 AD3d 1143; *Bloch v RT Long Is. Franchise, LLC*, 70 AD3d 993; *Hunt v Meyers*, 63 AD3d 685; *Slattery v O'Shea*, 46 AD3d 669, 670). In opposition, the plaintiffs failed to submit evidentiary proof in admissible form sufficient to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The affidavit of the plaintiffs' witness, who did not see the injured plaintiff fall and arrived at the scene "a few minutes" later, was insufficient to raise a triable issue of fact (*see Patrick v Costco Wholesale Corp.*, 77 AD3d 810; *Hartman v Mountain Val. Brew Pub*, 301 AD2d 570). Accordingly, the Supreme Court

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properly granted the defendant's motion for summary judgment dismissing the complaint.

MASTRO, J.P., CHAMBERS, ROMAN and COHEN, 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