

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

D30254
G/kmb

_____AD3d_____

Argued - February 8, 2011

JOSEPH COVELLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2010-02264

DECISION & ORDER

Patrice Katz, respondent, v Westchester County
Healthcare Corporation, et al., appellants.

(Index No. 19460/08)

Wilson, Bave, Conboy, Cozza & Couzens, P.C., White Plains, N.Y. (Claudine Weis of counsel), for appellants.

Lucchese & D'Ammora, LLP, White Plains, N.Y. (Andrew Bokar of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Westchester County (Loehr, J.), entered February 3, 2010, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A property owner has a duty to maintain his or her property in a reasonably safe condition (*see Basso v Miller*, 40 NY2d 233, 241). However, a property owner has no duty to protect or warn against an open and obvious condition, which as a matter of law is not inherently dangerous (*see Tyz v First St. Holding Co., Inc.*, 78 AD3d 818; *Weiss v Half Hollow Hills Cent. School Dist.*, 70 AD3d 932; *Bretts v Lincoln Plaza Assoc., Inc.*, 67 AD3d 943; *Neville v 187 E. Main St., LLC*, 33 AD3d 682; *Cupo v Karfunkel*, 1 AD3d 48). Whether a hazard is open and obvious cannot be divorced from the surrounding circumstances. A condition that is ordinarily apparent to a person making reasonable use of his or her senses may be rendered a trap for the unwary where the condition is obscured or the plaintiff is distracted (*see Stoppeli v Yacenda*, 78 AD3d 815, 816;

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Villano v Strathmore Terrace Homeowners Assn., Inc., 76 AD3d 1061; *Shah v Mercy Med. Ctr.*, 71 AD3d 1120; *Mazzarelli v 54 Plus Realty Corp.*, 54 AD3d 1008, 1009). Here, the defendants failed to establish, prima facie, that the alleged condition that caused the plaintiff to trip and fall was open and obvious and not inherently dangerous (see *Carson v Baldwin Union Free School Dist.*, 77 AD3d 878; see generally *Cupo v Karfunkel*, 1 AD3d 48). Since the defendants did not meet their initial burden as the movants, the burden never shifted to the plaintiff to submit evidence sufficient to raise a triable issue of fact (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851). Accordingly, the Supreme Court correctly denied the defendants' motion for summary judgment dismissing the complaint.

COVELLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court