

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

D30417
Y/ct

_____AD3d_____

Argued - February 7, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-00566

DECISION & ORDER

Konstantinos Kiritsis, et al., appellants, v North Shore
School District, respondent, et al., defendant
(and a third-party action).

(Index No. 4037/07)

Levine & Gilbert, New York, N.Y. (Harvey A. Levine of counsel), for appellants.

Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y.
(Christine Gasser of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from a judgment of the Supreme Court, Nassau County (Palmieri, J.), dated December 15, 2009, which, upon a jury verdict in favor of the defendant North Shore School District, and upon the denial of their motion pursuant to CPLR 4404(a) to set aside the verdict as contrary to the weight of the evidence, is in favor of the defendant North Shore School District and against them, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiffs' contention, the facts adduced at trial were insufficient to warrant a jury charge on the doctrine of *res ipsa loquitur*. The nature of the testimony did not give rise to an inference that the injury was caused by an instrumentality within the exclusive control of the defendant North Shore School District (*see Bodnarchuk v State of New York*, 49 AD3d 581, 582; *Sangiovanni v Koloski*, 31 AD3d 422, 423; *Patrick v Bally's Total Fitness*, 292 AD2d 433, 434-435). Thus, the Supreme Court properly denied the plaintiffs' request for a *res ipsa loquitur* charge.

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The photographs the plaintiffs admitted into evidence were insufficient to support an inference that the defendant North Shore School District had constructive notice of any defect (*see Krakinowski v New York City Transit Auth.*, 18 AD3d 443, 444; *Lustenring v 98-100 Realty*, 1 AD3d 574, 577, 578).

Accordingly, the Supreme Court correctly denied the plaintiffs' motion to set aside the verdict as contrary to the weight of the evidence.

RIVERA, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court