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

D30420
Y/ct

_____AD3d_____ Argued - February 25, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2009-09935 DECISION & ORDER
2010-04309

Anne Rose Loiacono, appellant, v Quattro Piu, Inc., doing business as Pomodorino Restaurant, et al., respondents.

(Index No. 34645/07)

Charles G. Eichinger & Associates, P.C., Islandia, N.Y. (Jacqueline M. Skubik and Denise O'Rourke of counsel), for appellant.

Pillinger Miller Tarallo, LLP, Elmsford, N.Y. (Lawrence J. Buchman of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from (1) so much of an order of the Supreme Court, Suffolk County (Mayer, J.), dated September 8, 2009, as granted that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against the defendant Pummarola, Inc., doing business as Pomodorino Restaurant, and (2) so much of an order of the same court dated March 12, 2010, as, upon renewal, in effect, vacated so much of the order dated September 8, 2009, as denied that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against the defendant Quattro Piu, Inc., doing business as Pomodorino Restaurant, and thereupon granted that branch of the defendants' motion.

ORDERED that the orders are affirmed insofar as appealed from, with one bill of costs.

The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained by her after tripping over a step at the defendants' restaurant. The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the alleged condition which caused the plaintiff to fall was open and obvious and not inherently dangerous (*see Weiss v Half Hollow Hills Cent. School Dist*., 70 AD3d 932, 933; *Ramos v Cooper Invs. Inc.*,, 49 AD3d 623, 624; *Pirie v Krasinski*, 18 AD3d 848, 849). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp*., 68 NY2d 320, 324). Accordingly, the Supreme Court properly awarded the defendants summary judgment dismissing the complaint.

MASTRO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court