

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

D30812
O/ct

_____AD3d_____

Argued - March 15, 2011

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2010-02845

DECISION & ORDER

Richard Santiago, appellant, v C&S Wholesale Grocers Incorporated, defendant third-party plaintiff-respondent; North Jersey Trailer and Truck Service, Inc., third-party defendant.

(Index No. 20271/06)

Barry E. Schulman, Brooklyn, N.Y. (Deborah Santelmo of counsel), for appellant.

Morrison Mahoney, LLP, New York, N.Y., for defendant third-party plaintiff respondent.

James R. Pieret, Garden City, N.Y. (Michael J. Colleary of counsel), for third-party defendant.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Rothenberg, J.), dated January 15, 2010, as granted the defendant's cross motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs to the defendant third-party plaintiff-respondent.

The defendant C&S Wholesale Grocers Incorporated (hereinafter C&S) made a prima facie showing of its entitlement to judgment as a matter of law dismissing the complaint. It

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established that it neither created nor had actual or constructive notice of an allegedly defective trailer door strap (see *Fontana v R.H.C. Develop., LLC*, 69 AD3d 561, 562; *DeCarlo v Village of Dobbs Ferry*, 36 AD3d 749, 750; *Levinstim v Parker*, 27 AD3d 698, 699). In opposition, the plaintiff failed to raise a triable issue of fact.

Furthermore, the Supreme Court did not improvidently exercise its discretion in refusing to consider the plaintiff's expert's affidavit, since the identity of the expert was not timely disclosed by the plaintiff and the plaintiff offered no excuse for his delay in identifying his expert (see CPLR 3101[d][1]; *Gerardi v Verizon N.Y., Inc.*, 66 AD3d 960, 961; *Wartski v C.W. Post Campus of Long Is. Univ.*, 63 AD3d 916, 917). In any event, even if the plaintiff's expert affidavit could have properly been considered, the result would not have been different (see *Gerardi v Verizon N.Y., Inc.*, 66 AD3d at 961; *Wartski v C.W. Post Campus of Long Is. Univ.*, 63 AD3d at 917).

Accordingly, the Supreme Court properly granted C&S's cross motion for summary judgment dismissing the complaint.

RIVERA, J.P., CHAMBERS, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court