

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

D30942
C/ct

_____AD3d_____

Argued - January 31, 2011

JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-02598

DECISION & ORDER

Charles F. Delanoy, respondent, v JP Morgan
Chase and Company, appellant.

(Index No. 24681/08)

Russo, Keane & Toner, LLP, New York, N.Y. (Kevin G. Horbatiuk, Matthew P. Mazzola, and Angela E. Turturro of counsel), for appellant.

Grant and Longworth, LLP (Marie R. Hodukavich, Peekskill, N.Y., of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Westchester County (Liebowitz, J.), entered January 26, 2010, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

The plaintiff allegedly was injured in a parking lot maintained by the defendant. According to the plaintiff, he cut his arm on a defective signpost in the parking lot.

The Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint. The defendant established, prima facie, that it did not have actual or constructive notice of the alleged defective condition by submitting, inter alia, the affidavit of its assistant branch manager, who stated that she inspected the premises on a daily basis, including the

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subject signpost, and, prior to the plaintiff's accident, never saw the signpost "in a defective condition" (see *Gordon v American Museum of Natural History*, 67 NY2d 836, 837; *Weeman v Rouse SI Shopping Ctr. LLC*, 79 AD3d 855). In opposition, the plaintiff failed to raise a triable issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court