

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

D31273
W/prt

_____AD3d_____

Argued - April 25, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-01157

DECISION & ORDER

Mary Loughlin, appellant, v Town of North
Hempstead, respondent.

(Index No. 19841/07)

Kenneth J. Ready, Mineola, N.Y. (Anthony Orcel of counsel), for appellant.

Richard S. Finkel, Town Attorney, Manhasset, N.Y. (Linda B. Zuech and Peter A.
Dzwilewski of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Brandveen, J.), entered December 14, 2009, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action against the Town of North Hempstead to recover damages for personal injuries she allegedly sustained when she tripped and fell on a sidewalk maintained by the Town. The Town moved for summary judgment dismissing the complaint on the ground that it had not received prior written notice of the allegedly dangerous condition. The Supreme Court granted the motion, and the plaintiff appeals. We affirm.

The Town established its prima facie entitlement to judgment as a matter of law by demonstrating that it did not have prior written notice of the allegedly dangerous condition of the sidewalk (*see* Code of the Town of North Hempstead § 26-1; *Camenson v Town of N. Hempstead*, 298 AD2d 543, 543; *see also* *Regan v Town of N. Hempstead*, 66 AD3d 863, 864; *Jason v Town of*

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N. Hempstead, 61 AD3d 936, 936).

In opposition, the plaintiff failed to raise a triable issue of fact as to whether the Town received prior written notice or whether the Town either created the alleged hazard through an affirmative act of negligence or enjoyed a special use over the portion of the sidewalk where she fell, the two recognized exceptions to the notice requirement (*see Jason v Town of N. Hempstead*, 61 AD3d at 936-937; *see also Amabile v City of Buffalo*, 93 NY2d 471, 474). Contrary to the plaintiff's contention, the affidavit of her expert was insufficient to raise a triable issue of fact as to whether the Town created the alleged hazard through an affirmative act of negligence, because his conclusions "were not supported by empirical data or any relevant construction practice or industry standards, and [he] failed to explain how he had reached the conclusions that he did" (*Delgado v County of Suffolk*, 40 AD3d 575, 576; *see Rochford v City of Yonkers*, 12 AD3d 433, 434; *see also Sollowen v Town of Brookhaven*, 43 AD3d 816, 817; *Winsche v Town of N. Hempstead*, 304 AD2d 756, 757). Moreover, the plaintiff did not attempt to show that the Town had a special use over the relevant portion of the sidewalk.

Accordingly, the Supreme Court properly granted the Town's motion for summary judgment dismissing the complaint.

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

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court