

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

D31343
C/nl

_____AD3d_____

Argued - May 2, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2010-10244

DECISION & ORDER

Lissyama M. Mathew, respondent, v A.J. Richard &
Sons, et al., appellants.

(Index No. 44199/07)

Gregory J. Parisi (Michelle S. Russo, P.C., Port Washington, N.Y. of counsel), for
appellants.

Sean H. Rooney, Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Kings County (Martin, J.), dated September 21, 2010, which denied
their motion for summary judgment dismissing the complaint.

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

The plaintiff commenced this action to recover damages for personal injuries she
allegedly sustained as a result of the defendants' negligence. The plaintiff alleges that on May 15,
2008, while inside one of the defendants' stores, she sustained injuries when the lid of a barbecue
grill, which was on display on the showroom floor, closed and struck her on the back as she leaned
against the grill while making a cell phone call. The defendants moved for summary judgment
dismissing the complaint on the ground that the open lid of the barbecue grill was open and obvious
and did not constitute a dangerous condition as a matter of law. The Supreme Court denied the
defendants' motion. We reverse.

May 17, 2011

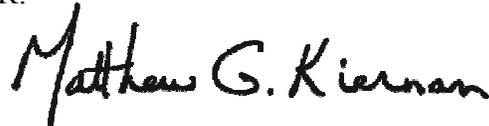
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While a landowner has a duty to maintain its premises in a reasonably safe condition (see *Basso v Miller*, 40 NY2d 233, 241; *Robinson v 206-16 Hollis Ave. Food Corp.*, 82 AD3d 735; *Gradwohl v Stop & Shop Supermarket Co., LLC*, 70 AD3d 634, 636), a landowner has no duty to protect or warn against an open and obvious condition that is not inherently dangerous (see *Tyz v First St. Holding Co., Inc.*, 78 AD3d 818; *Weiss v Half Hollow Hills Cent. School Dist.*, 70 AD3d 932). Here, the defendants established that the open lid of the barbecue grill was open and obvious and not inherently dangerous (see *Flaim v Hex Food, Inc.*, 79 AD3d 797; *Tyz v First St. Holding Co., Inc.*, 78 AD3d 818; *Weiss v Half Hollow Hills Cent. School Dist.*, 70 AD3d 932; *Stern v Costco Wholesale*, 63 AD3d 1139; *Bernth v King Kullen Grocery Co., Inc.*, 36 AD3d 844; *Pirie v Krasinski*, 18 AD3d 848, 849). In opposition, the plaintiff failed to raise a triable issue of fact (see generally *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

ANGIOLILLO, J.P., DICKERSON, BELEN and SGROI, 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