

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

D31574
W/kmb

_____AD3d_____

Argued - May 17, 2011

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2010-10295

DECISION & ORDER

Assunta Nisi, et al., appellants, v Shop-Rite
Supermarkets, Inc., respondent.

(Index No. 6319/09)

Michael Fuller Sirignano, Cross River, N.Y., for appellants.

Alan R. Lewis, Newburgh, N.Y. (John G. Caulfield of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Westchester County (Murphy, J.), entered September 30, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The injured plaintiff allegedly slipped and fell on liquid on the floor of the defendant's supermarket. The defendant established its entitlement to judgment as a matter of law by demonstrating that it did not create or have actual or constructive notice of the alleged hazardous condition on the floor (*see Slintak v Price Chopper Supermarkets*, 81 AD3d 808; *Mersack v BJ's Wholesale Club, Inc.*, 64 AD3d 756; *Sloane v Costco Wholesale Corp.*, 49 AD3d 522; *Popovec v Great Atl. & Pac. Tea Co., Inc.*, 26 AD3d 321). In opposition, the plaintiffs failed to raise a triable issue of fact. The injured plaintiff's affidavit submitted in opposition to the motion raised feigned factual issues with respect to the issue of notice, which were designed to avoid the consequences of

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her deposition testimony (*see Ruck v Levittown Norse Assoc., LLC*, 27 AD3d 444, 445; *Popovec v Great Atl. & Pac. Tea Co., Inc.*, 26 AD3d 321). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

MASTRO, J.P., DICKERSON, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court