

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

D31805  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 27, 2011

WILLIAM F. MASTRO, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
JEFFREY A. COHEN, JJ.

2010-03248

DECISION & ORDER

Toni Sciammarella, et al., appellants, v Manorville  
Postal Associates, respondent.

(Index No. 37409/07)

Richard A. Engelberg, P.C., Plainview, N.Y., for appellants.

Andrea G. Sawyers, Melville, N.Y. (Dominic P. Zafonte of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated March 3, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff Toni Sciammarella, then an employee of the United States Postal Service (hereinafter the Postal Service), allegedly sustained injuries when she fell after stepping into a hole in the parking lot of the premises leased to the Postal Service by the defendant.

“An out-of-possession landlord may not be held liable for injuries occurring on its premises unless it is contractually obligated to perform maintenance and repairs or it has retained control over the premises” (*Salaices v Gar-Ben Assoc.*, 82 AD3d 740, 741; *see Guzman v Haven Plaza Hous. Dev. Fund Co.*, 69 NY2d 559, 566-567). The defendant established its prima facie entitlement to judgment as a matter of law by establishing that it was an out-of-possession landlord that did not retain control over the premises and was not contractually obligated to maintain or repair the parking lot (*see Sanchez v Barnes & Nobel, Inc.*, 59 AD3d 698, 699; *Yadegar v International*

August 2, 2011

Page 1.

SCIAMMARELLA v MANORVILLE POSTAL ASSOCIATES

*Food Mkt.*, 37 AD3d 595, 596-597; *Brockington v Brookfield Dev. Corp.*, 20 AD3d 382, 382-383). In opposition, the plaintiffs failed to raise a triable issue of fact (see *Lauer v Great S. Bay Seafood Co.*, 299 AD2d 325, 327; *Amarante v Village of Tarrytown*, 226 AD2d 488; see also *Pala v D. Braf, Ltd.*, 284 AD2d 382).

MASTRO, J.P., ANGIOLILLO, CHAMBERS and COHEN, 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