

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

D32359
W/kmb

_____AD3d_____

Submitted - September 6, 2011

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
JEFFREY A. COHEN, JJ.

2010-08510

DECISION & ORDER

Jeanette Cantwell, appellant, v Fox Hill
Community Association, Inc., etc., respondent
(and a third-party action).

(Index No. 6259/08)

Basch & Keegan, LLP, Kingston, N.Y. (Derek J. Spada of counsel), for appellant.

Thomas N. Bona, P.C., White Plains, N.Y. (Debra C. Salvi and Michael Flake of
counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Sproat, J.), dated July 15, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A real property owner or a party in possession or control of real property will be held liable for injuries sustained in a slip-and-fall accident involving snow and ice on its property only when it created the alleged dangerous condition or had actual or constructive notice of it (*see Crosthwaite v Acadia Realty Trust*, 62 AD3d 823; *Abbattista v King's Grant Master Assn., Inc.*, 39 AD3d 439; *Nielsen v Metro-North Commuter R.R. Co.*, 30 AD3d 497; *Zabbia v Westwood, LLC*, 18 AD3d 542).

The defendant established its entitlement to judgment as a matter of law by submitting evidence sufficient to demonstrate that it did not create or have actual or constructive notice of the

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“black ice” that allegedly caused the plaintiff to fall (*see Robinson v Trade Link Am.*, 39 AD3d 616; *Murphy v 136 N. Blvd. Assoc.*, 304 AD2d 540). In opposition, the plaintiff failed to raise a triable issue of fact (*see Connelly v Shop Rite Supermarkets, Inc.*, 38 AD3d 588; *Anderson v Central Val. Realty Co.*, 300 AD2d 422). Accordingly, the Supreme Court properly granted the defendant’s motion for summary judgment dismissing the complaint.

The plaintiff’s remaining contentions either have been rendered academic or are without merit.

DILLON, J.P., ANGIOLILLO, DICKERSON and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court