

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

D32461  
H/prt

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Submitted - September 20, 2011

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
SANDRA L. SGROI, JJ.

2010-07208

DECISION & ORDER

Kiwan Tavares, etc., et al., appellants, v  
City of New York, respondent.

(Index No. 184/08)

Siler & Ingber, LLP, Mineola, N.Y. (Michelle B. Kanter of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Larry A. Sonnenshein of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Sherman, J.), entered June 16, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On June 28, 2007, the infant plaintiff, Kiwan Tavares, allegedly was injured in a playground when he fell from a ladder on a jungle gym. The playground was owned by the defendant, City of New York.

The defendant established its prima facie entitlement to judgment as a matter of law by offering evidence that it neither created nor had actual or constructive notice of any dangerous conditions on the ladder (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). In his affidavit submitted in opposition, the plaintiffs' expert relied upon alleged violations of guidelines promulgated by the Consumer Products Safety Commission, "which are neither mandatory nor intended to be the

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exclusive standards for playground safety” (*Washington v City of Yonkers*, 293 AD2d 741, 742, quoting *Merson v Syosset Cent. School Dist.*, 286 AD2d 668, 670). Thus, the expert affidavit was insufficient to raise a triable issue of fact.

Accordingly, the defendant’s motion for summary judgment dismissing the complaint was properly granted.

MASTRO, J.P., FLORIO, ENG and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court