

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

D32526
N/kmb

_____AD3d_____

Argued - September 22, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2011-00708

DECISION & ORDER

Ruben Fonseca, respondent, v Angelica Textile
Services, Inc., appellant, et al., defendant.

(Index No. 30370/07)

Zaremba, Brownell & Brown, PLLC, New York, N.Y. (Richard J. Brownell of
counsel), for appellant.

Wingate, Russotti & Shapiro, LLP, New York, N.Y. (Kenneth J. Halperin and David
Schwarz of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant
Angelica Textile Services, Inc., appeals from an order of the Supreme Court, Kings County (Bunyan,
J.), dated November 17, 2010, which denied its motion for summary judgment dismissing the
complaint insofar as asserted against it.

ORDERED that the order is modified, on the law, by deleting the provision thereof
denying that branch of the motion of the defendant Angelica Textile Services, Inc., which was for
summary judgment dismissing the first, second, third, and fourth causes of action insofar as asserted
against it, and substituting therefor a provision granting that branch of the motion; as so modified,
the order is affirmed, without costs or disbursements.

The plaintiff, an employee of a hospital, allegedly was injured while transporting
linens on a bin delivered by the defendant Angelica Textile Services, Inc. (hereinafter Angelica),
which provided linen service to the hospital. According to the plaintiff, the bin, which was on
wheels, suddenly stopped as he was pushing it, causing him to injure his back.

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The Supreme Court properly denied that branch of Angelica's motion which was for summary judgment dismissing the fifth cause of action alleging negligence insofar as asserted against it. In opposition to Angelica's prima facie showing of its entitlement to judgment as a matter of law with respect to that cause of action, the plaintiff raised triable issues of fact as to whether Angelica created or had constructive notice of an allegedly dangerous condition relating to the bin (*see Zuckerman v City of New York*, 49 NY2d 557, 562; *Currado v Waldbaum, Inc.*, 303 AD2d 442, 443; *Albergo v Deer Park Meat Farms*, 138 AD2d 656, 656-657).

However, as correctly conceded on appeal by the plaintiff, the first, second, third, and fourth causes of action relating to products liability cannot be sustained against Angelica since it did not manufacture, distribute, or sell the bin (*see Sukljan v Ross & Son Co.*, 69 NY2d 89, 94-95). Therefore, the Supreme Court should have granted that branch of Angelica's motion which was for summary judgment dismissing those causes of action insofar as asserted against it.

ANGIOLILLO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court