

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

D32941
Y/mv

_____AD3d_____

Argued - November 1, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2010-09059

DECISION & ORDER

Maureen Blagrove, respondent, v Metropolitan
Transportation Authority, et al., appellants.

(Index No. 19880/08)

Mulholland Minion Duffy Davey McNiff & Beyrer, Willston Park, N.Y. (Robert A. Seeman of counsel), for appellants.

Sacco & Fillas, LLP, Whitestone, N.Y. (Lamont K. Rodgers of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Weiss, J.), dated July 7, 2010, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

At approximately 6:00 P.M. on January 4, 2008, the plaintiff allegedly was injured when she tripped and fell while descending a stairway leading from the Long Island Rail Road (hereinafter LIRR) platform at the Locust Manor station in Queens. The plaintiff testified at her deposition that the cause of her accident was a broken and cracked concrete step. The Supreme Court denied the defendants' motion for summary judgment. We affirm.

In support of their motion for summary judgment, the defendants failed to make a prima facie showing that the alleged defective condition was trivial as a matter of law and, thus, not

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actionable (*see Bolloli v Waldbaum, Inc.*, 71 AD3d 618; *Serano v New York City Hous. Auth.*, 66 AD3d 867; *Ricker v Board of Educ. of Town of Hyde Park*, 61 AD3d 735). Furthermore, the defendants failed to establish, *prima facie*, that they did not have constructive notice of the condition complained of, especially given the photographic evidence which they submitted in support of their motion (*see Bolloli v Waldbaum, Inc.*, 71 AD3d at 619-620). Moreover, contrary to the defendants' contention, the plaintiff clearly identified the cause of her fall at her deposition. Since the defendants failed to meet their *prima facie* burden, we need not address the sufficiency of the plaintiff's papers in opposition (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

Accordingly, the Supreme Court correctly denied the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., BALKIN, LEVENTHAL and BELEN, 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