

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

D32950  
N/prt

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Submitted - October 11, 2011

WILLIAM F. MASTRO, J.P.  
RANDALL T. ENG  
ARIEL E. BELEN  
L. PRISCILLA HALL, JJ.

2010-11011

DECISION & ORDER

Luann Mallen, appellant, v Farmingdale Lanes, LLC,  
respondent.

(Index No. 20667/08)

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Robert K. Young & Associates, P.C., Merrick, N.Y. (Gary J. Young and Jennifer Deaver of counsel), for appellant.

Callahan & Fusco, LLC, New York, N.Y. (Matthew D. Stockwell of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Iannacci, J.), entered October 7, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established its prima facie entitlement to judgment as a matter of law by submitting, inter alia, the deposition testimony of the plaintiff, which demonstrated that the plaintiff could not identify the cause of her fall (*see Patrick v Costco Wholesale Corp.*, 77 AD3d 810, 810; *Bloch1 v RT Long Is. Franchise, LLC*, 70 AD3d 993; *Louman v Town of Greenburgh*, 60 AD3d 915).

In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff's expert affidavit was speculative and conclusory and, therefore, insufficient to raise a triable issue of fact (*see Fotiatis v Cambridge Hall Tenants Corp.*, 70 AD3d 631, 632; *Pappas v Cherry Cr., Inc.*, 66

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AD3d 658, 659; *Rivas-Chirino v Wildlife Conservation Socy.*, 64 AD3d 556, 558). Further, the plaintiff's contention that incident reports regarding prior accidents raised a triable issue of fact as to whether there was a dangerous condition or whether the defendant had notice of any such condition is speculative, as there was no evidence that those accidents were similar in nature to the plaintiff's accident (*see Hyde v County of Rensselaer*, 51 NY2d 927, 929; *Gjonaj v Otis El. Co.*, 38 AD3d 384, 385). The plaintiff's reliance upon a statement as to the cause of her accident contained in an incident report is also unavailing, as the report contained hearsay and the plaintiff failed to lay the proper foundation for its admission as a business record (*see CPLR 4518[a]*; *Roldan v New York Univ.*, 81 AD3d 625, 627; *Stock v Otis El. Co.*, 52 AD3d 816, 817; *Daliendo v Johnson*, 147 AD2d 312, 321). "Although hearsay evidence may be considered in opposition to a motion for summary judgment, it is insufficient to bar summary judgment if it is the only evidence submitted" (*Stock v Otis El. Co.*, 52 AD3d at 816-817 [internal quotation marks omitted]). Accordingly, since the hearsay evidence, by itself, was insufficient to raise a triable issue of fact, and the other evidence submitted by the plaintiff in opposition to the defendant's motion also failed to raise a triable issue of fact, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

MASTRO, J.P., ENG, BELEN and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court