

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

D33225  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 21, 2011

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2010-11535

DECISION & ORDER

Mimi Iwelu, respondent, v New York City Transit  
Authority, appellant, et al., defendant.

(Index No. 20760/07)

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Wallace D. Gossett, Brooklyn, N.Y. (Lawrence Heisler of counsel), for appellant.

Lipsig, Shapey, Manus & Moverman, P.C., New York, N.Y. (Berson & Budashewitz,  
LLP [Jeffrey A. Berson], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant New York City Transit Authority appeals from an order of the Supreme Court, Kings County (Velasquez, J.), dated October 5, 2010, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant New York City Transit Authority for summary judgment dismissing the complaint insofar as asserted against it is granted.

On March 30, 2006, the plaintiff allegedly tripped while ascending the steps of the Clinton/Washington subway station in Brooklyn. The plaintiff commenced this action against, among others, the New York City Transit Authority (hereinafter the Transit Authority), alleging that the bottom step of the stairway was unsafe because there was an opening in the riser of the step. The Transit Authority moved for summary judgment dismissing the complaint insofar as asserted against it, contending, among other things, that the condition was readily observable by the reasonable use of one's senses and was not inherently dangerous. The plaintiff opposed the motion, contending that

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there were triable issues of fact as to whether the partially open riser constituted an inherently dangerous condition. The plaintiff also asserted that the stairway was dimly lit. The Supreme Court denied the motion. We reverse.

A landowner has a duty to maintain his or her premises in a reasonably safe manner (*see Basso v Miller*, 40 NY2d 233, 241). However, he or she has no duty to protect or warn against an open and obvious condition, which as a matter of law is not inherently dangerous (*see Cupo v Karfunkel*, 1 AD3d 48, 52).

Here, the Transit Authority established, prima facie, its entitlement to judgment as a matter of law by submitting evidence, inter alia, in the form of expert affidavits and photographs of the accident scene, showing that the aspect of the riser which allegedly caused the plaintiff to fall was readily observable by the reasonable use of one's senses and was not inherently dangerous (*see Russ v Fried*, 73 AD3d 1153, 1154; *Pipitone v 7-Eleven, Inc.*, 67 AD3d 879, 880; *Harris v APW Supermarkets, Inc.*, 63 AD3d 1000, 1001; *Espada v Mid-Island Babe Ruth League, Inc.*, 50 AD3d 843, 843; *Tenenbaum v Best 21 Ltd.*, 15 AD3d 646, 646; *Mansueto v Worster*, 1 AD3d 412, 413).

Contrary to the plaintiff's contention, her deposition testimony was insufficient to raise a triable issue of fact as to whether a lighting condition was a proximate cause of the accident (*see Outlaw v Citibank, N.A.*, 35 AD3d 564; *Leib v Silo Rest., Inc.*, 26 AD3d 359, 360; *Gordon v New York City Tr. Auth.*, 267 AD2d 201, 202; *Curran v Esposito*, 308 AD2d 428, 429). Furthermore, the plaintiff's expert's affidavit was conclusory and insufficient to raise a triable issue of fact as to whether the partially open riser constituted an inherently dangerous condition (*see Losciuto v City Univ. of N.Y.*, 80 AD3d 576, 577; *Grob v Kings Realty Assoc.*, 4 AD3d 394, 395). Accordingly, the Supreme Court should have granted the Transit Authority's motion for summary judgment dismissing the complaint insofar as asserted against it.

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

ENTER:



Aprilanne Agostino  
Clerk of the Court