

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

D33236
N/kmb

_____AD3d_____

Argued - October 28, 2011

WILLIAM F. MASTRO, A.P.J.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-04675

DECISION & ORDER

Myrsa Dapolito, et al., respondents, v Stop & Shop
Supermarket, appellant.

(Index No. 101577/09)

Torino & Bernstein, P.C., Mineola, N.Y. (Michael A. Amodio and Bruce A. Torino
of counsel), for appellant.

George F. Sacco, Staten Island, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Richmond County (Minardo, J.), dated March 29, 2011, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

The injured plaintiff allegedly tripped and fell over an empty display platform in between the ends of two aisles at the defendant's supermarket. The platform was about four inches tall, four feet wide, and four to five feet deep. The defendant moved for summary judgment dismissing the complaint, contending that the condition was open and obvious, and not inherently dangerous. The Supreme Court denied the motion. We reverse.

The defendant established, prima facie, that the display platform at issue was open and obvious, and not inherently dangerous (*see Bretts v Lincoln Plaza Assoc., Inc.*, 67 AD3d 943, 944; *Neiderbach v 7-Eleven, Inc.*, 56 AD3d 632; *Tenenbaum v Best 21 Ltd.*, 15 AD3d 646). In

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opposition, the plaintiffs failed to raise a triable issue of fact.

Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

MASTRO, A.P.J., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court