

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

D33430
C/kmb

_____AD3d_____

Argued - November 15, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-01249

DECISION & ORDER

Anthony Nunez, plaintiff-respondent, v North Shore University Hospital, defendant third-party plaintiff-respondent, et al., defendant; Samuel Cockburn & Sons, Inc., third-party defendant-appellant.

(Index No. 10469/07)

Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y. (Kathleen D. Foley of counsel), for third-party defendant-appellant.

Michaelangelo Matera, Melville, N.Y., for plaintiff-respondent.

Patrick F. Adams, P.C., Great River, N.Y. (Charles J. Adams and Frank Cali of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, the third-party defendant, Samuel Cockburn & Sons, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Marber, J.), entered December 29, 2010, as denied its motion for summary judgment dismissing the third-party complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs payable by the respondents, and the third-party defendant's motion for summary judgment dismissing the third-party complaint is granted.

The third-party defendant established its entitlement to judgment as a matter of law by establishing, *prima facie*, that it had no duty to maintain the area where the incident occurred and that it did not affirmatively create the alleged hazardous condition (*see Alvarez v Prospect Hosp.*,

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68 NY2d 320). In opposition, the respondents failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557). Accordingly, the Supreme Court should have granted the third-party defendant's motion for summary judgment dismissing the third-party complaint.

The parties' remaining contentions need not be reached in light of our determination.

RIVERA, J.P., LEVENTHAL, ROMAN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court