

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

D33735
N/kmb

_____AD3d_____

Argued - December 13, 2011

ANITA R. FLORIO, J.P.
ARIEL E. BELEN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-03358

DECISION & ORDER

Kathleen Holdos, appellant, v American Consumer Shows, Inc., et al., respondents.

(Index No. 30227/09)

Schwartzapfel Partners, P.C. (Alexander J. Wulwick, New York, N.Y., of counsel), for appellant.

Rivkin Radler LLP, Uniondale, N.Y. (Evan H. Krinick and Cheryl F. Korman of counsel), for respondent American Consumer Shows, Inc.

James R. Pieret, Garden City, N.Y., for respondent Gordon L. Seaman, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (Spinner, J.), dated March 9, 2011, as granted those branches of the separate motions of the defendant American Consumer Shows, Inc., and the defendant Gordon L. Seaman, Inc., which were for summary judgment dismissing the complaint insofar as asserted against each of them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

There is 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). Here, the defendants established their prima facie entitlement to judgment as a matter of law dismissing the complaint insofar as asserted against each of them by presenting evidence that the yellow and blue cable cover over which the plaintiff allegedly tripped and fell while attending a trade show in a community

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college gymnasium was open and obvious, and was not inherently dangerous (*see Russ v Fried*, 73 AD3d 1153, 1154; *Jang Hee Lee v Sung Whun Oh*, 3 AD3d 473, 474; *see also Pipitone v 7-Eleven, Inc.*, 67 AD3d 879, 880). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Khaimova v Osnat Corp.*, 21 AD3d 401).

Accordingly, the Supreme Court properly granted those branches of the defendants' separate motions which were for summary judgment dismissing the complaint insofar as asserted against each of them.

FLORIO, J.P., BELEN, ROMAN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court