

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

D34039  
N/prt

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

Argued - January 31, 2012

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

2011-05421

DECISION & ORDER

Luz Rogers, respondent, v 575 Broadway  
Associates, L.P., et al., appellants.

(Index No. 2169/09)

Tromello, McDonnell & Kehoe, Melville, N.Y. (James S. Kehoe of counsel), for  
appellants.

Arthur M. Unterman, Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an  
order of the Supreme Court, Queens County (Weiss, J.), entered April 20, 2011, which denied their  
motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On January 30, 2006, the plaintiff exited a building located at 575 Broadway in  
Manhattan (hereinafter the premises) and, while walking on the Prince Street side of the premises,  
allegedly tripped and fell on an uneven sidewalk, sustaining injuries. Thereafter, the plaintiff  
commenced this action against the defendants, 575 Broadway Associates, L.P., 575 Broadway, LLC,  
and 575 Broadway Corporation. The defendant 575 Broadway, LLC, owns the premises. The  
defendant 575 Broadway Corporation is an owner of the defendant 575 Broadway Associates, L.P.,  
which was the lessee and responsible for maintaining the premises, including the abutting sidewalks.  
The Supreme Court denied the defendants' motion for summary judgment dismissing the complaint.  
The defendants appeal, and we affirm.

February 21, 2012

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“[W]hether a dangerous or defective condition exists on the property of another so as to create liability ‘depends on the peculiar facts and circumstances of each case’ and is generally a question of fact for the jury” (*Trincere v County of Suffolk*, 90 NY2d 976, 977, quoting *Guerrieri v Summa*, 193 AD2d 647, 647 [internal quotation marks omitted]; see *Aguayo v New York City Hous. Auth.*, 71 AD3d 926; *Copley v Town of Riverhead*, 70 AD3d 623). However, injuries resulting from trivial defects, not constituting a trap or nuisance, over which a pedestrian might merely stumble, stub his or her toes, or trip, are not actionable (see *Aguayo v New York City Hous. Auth.*, 71 AD3d 926; *Joseph v Villages at Huntington Home Owners Assn., Inc.*, 39 AD3d 481; *Outlaw v Citibank, N.A.*, 35 AD3d 564).

Here, the evidence submitted by the defendants, including deposition testimony and photographs, was insufficient to demonstrate, as a matter of law, that no defective condition existed on the sidewalk where the plaintiff allegedly tripped and fell, or that, if such a condition did exist, the defect was trivial and did not constitute a trap or nuisance, and therefore was not actionable (see *Perez v 655 Montauk, LLC*, 81 AD3d 619; *Bolloli v Waldbaum, Inc.*, 71 AD3d 618; *Hahn v Wilhelm*, 54 AD3d 896; *Corrado v City of New York*, 6 AD3d 380). Moreover, the defendants failed to demonstrate, as a matter of law, that they lacked constructive notice of the alleged defect (see *Bolloli v Waldbaum, Inc.*, 71 AD3d at 620). In light of the defendants’ failure to meet their prima facie burden, it is unnecessary to determine whether the plaintiff’s opposition papers were sufficient to raise a triable issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Accordingly, the Supreme Court properly denied the defendants’ motion for summary judgment dismissing the complaint.

DILLON, J.P., FLORIO, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court