

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

D34228
W/prt

_____AD3d_____

Argued - January 31, 2012

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

2011-02435

DECISION & ORDER

Michelle Lawrence, appellant, v Rockland County
Board of Cooperative Educational Services,
respondent.

(Index No. 9785/09)

Barr, Post & Associates, PLLC, Spring Valley, N.Y. (Craig A. Post of counsel), for
appellant.

Barry McTiernan & Moore, New York, N.Y. (Laurel A. Wedinger of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Rockland County (Kelly, J.), dated January 18, 2011, which granted the
defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On the morning of October 7, 2008, the plaintiff, a nursing student, arrived early for
class at a building owned by the defendant, Rockland County Board of Cooperative Educational
Services (hereinafter BOCES). Her classroom was locked, and she sat down in a chair in the
hallway. The chair collapsed and the plaintiff fell to the floor, sustaining personal injuries.

BOCES established its prima facie entitlement to judgment as a matter of law by
submitting evidence demonstrating that it neither created nor had notice, actual or constructive, of
the defective condition of the chair (*see Miles v Hicksville U.F.S.D.*, 56 AD3d 625, 625-626;

March 20, 2012

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Loiacono v Stuyvesant Bagels, Inc., 29 AD3d 537, 538). In opposition, the plaintiff failed to raise a triable issue of fact. The subject chair was located in a hallway outside a classroom, giving numerous persons access to it and, thus, BOCES did not have exclusive control over it. Consequently, under the circumstances here, the plaintiff could not invoke the doctrine of res ipsa loquitur (see *Miles v Hicksville U.F.S.D.*, 56 AD3d at 626; *Dulgov v City of New York*, 33 AD3d 584, 585; *Loiacono v Stuyvesant Bagels, Inc.*, 29 AD3d at 538; *Chini v Wendcentral Corp.*, 262 AD2d 940). Accordingly, the Supreme Court properly granted BOCES's motion for summary judgment dismissing the complaint.

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

ENTER:



Aprilanne Agostino
Clerk of the Court