

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

D34744
H/ct

_____AD3d_____

Argued - March 26, 2012

REINALDO E. RIVERA, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2011-10286

DECISION & ORDER

Virginia Callen, appellant, v Comsewogue School District,
respondent.

(Index No. 41696/09)

Jakubowski, Robertson, Maffei, Goldsmith & Tartaglia, LLP, Saint James, N.Y.
(James J. Herz and Frank M. Maffei, Jr., of counsel), for appellant.

Devitt Spellman Barrett, LLP, Smithtown, N.Y. (Diane K. Farrell and Nicholas M.
Brino of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated October 3, 2011, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured when she tripped over a chain, suspended between two poles, used to block off an access roadway located at Comsewogue High School. At her deposition, the plaintiff testified that the chain hit her at a "high ankle or low shin" level.

The defendant established, prima facie, that the chain was open and obvious, i.e., readily observable by those employing the reasonable use of their senses, and not inherently dangerous (*see Thomas v Pleasantville Union Free School Dist.*, 79 AD3d 853, 854; *Badalbaeva v City of New York*, 55 AD3d 764, 765; *Siegenfeld v Long Is. Power Auth.*, 46 AD3d 798, 799; *Sun Ho Chung v Jeong Sook Joh*, 29 AD3d 677, 678; *Plis v North Bay Cadillac*, 5 AD3d 578; *Cupo v Karfunkel*, 1 AD3d 48, 51-52). In opposition, the plaintiff failed to raise a triable issue of fact (*see*

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generally Alvarez v Prospect Hosp., 68 NY2d 320, 324). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., HALL, LOTT and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court