

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

D34926
W/prt

_____AD3d_____

Submitted - March 29, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2011-01148

DECISION & ORDER

Margarita Martinez, plaintiff-respondent, v Asta Surgical Chemists, Inc., doing business as Dale Chemists, defendant-respondent, Franciscan Construction Corp., appellant, et al., defendant.

(Index No. 14862/08)

Kral Clerkin Redmond Ryan Perry & Van Etten, LLP, Melville, N.Y. (John J. Ullrich of counsel), for appellant.

Jonathan Silver, Kew Gardens, N.Y., for plaintiff-respondent.

Faust Goetz Schenker & Blee LLP, New York, N.Y. (Lisa De Lindsay of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, the defendant Franciscan Construction Corp. appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Rosengarten, J.), entered December 2, 2010, as denied those branches of its motion which were for summary judgment dismissing so much of the complaint as sought to recover damages for common-law negligence and all cross claims insofar as asserted against it.

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

The defendant Franciscan Construction Corp. (hereinafter the appellant) failed to make a prima facie showing that it did not create the alleged hazardous condition that caused the plaintiff to slip and fall (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Van Dina v St. Francis Hosp.*, Roslyn, N.Y., 45 AD3d 673; *Dugan v Crown Broadway, LLC*, 33 AD3d 656, 657; *Avellino*

v TrizecHahn Newport, 5 AD3d 519). Since the appellant failed to meet its initial burden, it is not necessary to review the sufficiency of the opposition papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Willis v New York Racing Assn, Inc.*, 9 AD3d 406).

Accordingly, the Supreme Court properly denied those branches of the appellant's motion which were for summary judgment dismissing so much of the complaint as sought to recover damages for common-law negligence and all cross claims insofar as asserted against it.

DILLON, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court