

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

D35718
Y/ct

_____AD3d_____

Argued - May 29, 2012

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2011-06373

DECISION & ORDER

Marilyn Boggi, et al., appellants, v City of White Plains,
respondent.

(Index No. 18568/08)

James J. Killerlane, P.C., New York, N.Y. (David M. Samel of counsel), for appellants.

Joseph A. Maria, P.C., White Plains, N.Y. (Edward A. Frey of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Westchester County (Loehr, J.), dated May 31, 2011, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating that it lacked prior written notice of the allegedly defective condition that caused the subject accident (*see Groninger v Village of Mamaroneck*, 17 NY3d 125, 129; *see also McCarthy v City of White Plains*, 54 AD3d 828, 829; *Granderson v City of White Plains*, 29 AD3d 739). In opposition, the plaintiffs failed to raise a triable issue of fact as to whether there was such prior written notice (*see McCarthy v City of White Plains*, 54 AD3d at 829). Furthermore, although the plaintiffs attempted to raise a triable issue of fact as to whether the defendant created the condition through an affirmative act of negligence (*see Amabile v City of Buffalo*, 93 NY2d 471, 474), they failed to do so (*see Hyland v City of New York*, 32 AD3d 822, 823-824; *see also Schleif*

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v City of New York, 60 AD3d 926, 927-928; *Diaz v City of New York*, 56 AD3d 599, 600-601). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., DICKERSON, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court