

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

D35862
Y/hu

____AD3d____

Argued - June 19, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2011-09874

DECISION & ORDER

Berta Babitskaya, appellant, v Mosvideofilm Russia,
Inc., et al., defendants, N. Mayflower, Inc., et al.,
respondents.

(Index No. 22223/08)

Karasik Law Group, P.C., Brooklyn, N.Y. (Alexander Karasik of counsel), for
appellant.

DeSena & Sweeney, LLP, Hauppauge, N.Y. (Paul L. Felicione of counsel), for
respondent N. Mayflower, Inc.

Ahmuty, Demers & McManus, Albertson, N.Y. (Glenn A. Kaminska and Nicholas
M. Cardascia of counsel), for respondent Ocean Travel, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Kings County (Ruchelsman, J.), dated September 7, 2011, which
granted the separate motions of the defendants N. Mayflower, Inc., and Ocean Travel, Inc., for
summary judgment dismissing the complaint insofar as asserted against each of them.

ORDERED that the order is affirmed, with one bill of costs.

“In a slip-and-fall case, a plaintiff’s inability to identify the cause of the fall is fatal
to the cause of action because a finding that the defendant’s negligence, if any, proximately caused
the plaintiff’s injuries would be based on speculation” (*Patrick v Costco Wholesale Corp.*, 77 AD3d
810, 810; *see Califano v Maple Lanes*, 91 AD3d 896, 897; *Louman v Town of Greenburgh*, 60 AD3d
915, 916). Here, the defendants N. Mayflower, Inc. (hereinafter Mayflower), and Ocean Travel, Inc.

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(hereinafter Ocean), established, prima facie, their entitlement to judgment as a matter of law by submitting a transcript of the deposition testimony of the plaintiff, in which she testified that she did not know what had caused her to fall (*see Califano v Maple Lanes*, 91 AD3d at 897; *McFadden v 726 Liberty Corp.*, 89 AD3d 1067; *Capasso v Capasso*, 84 AD3d 997; *Rajwan v 109-23 Owners Corp.*, 82 AD3d 1199, 1200; *Patrick v Costco Wholesale Corp.*, 77 AD3d at 811; *Costantino v Webel*, 57 AD3d 472). In opposition, the plaintiff failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, the Supreme Court properly granted the separate motions of Mayflower and Ocean for summary judgment dismissing the complaint insofar as asserted against each of them.

ANGIOLILLO, J.P., DICKERSON, BELEN and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court