

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

D36520  
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Argued - September 25, 2012

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
SHERI S. ROMAN, JJ.

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2011-07230

DECISION & ORDER

Kelli O'Neill, appellant, v Town of Dover, respondent.

(Index No. 6551/08)

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Finkelstein & Partners, LLP, Newburgh, N.Y. (Andrew L. Spitz of counsel), for appellant.

McCabe & Mack LLP (Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y. [Gregory A. Cascino], of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Brands, J.), dated June 28, 2011, which granted the defendant's motion for summary judgment dismissing the complaint and denied her cross motion for summary judgment dismissing the defense of immunity pursuant to General Obligations Law § 9-103.

ORDERED that the order is affirmed, with costs.

In support of its motion for summary judgment dismissing the complaint, the defendant established its prima facie entitlement to judgment as a matter of law on the ground of its immunity from liability pursuant to General Obligations Law § 9-103 with evidence that it owned the property upon which the plaintiff's accident occurred, the plaintiff was engaged in one of the recreational activities specified by the statute, namely, hiking, and the property was suitable for that recreational use (*see Albright v Metz*, 88 NY2d 656, 662; *Fredette v Town of Southampton*, 95 AD3d 940, 940-941; *Rivera v Glen Oaks Vil. Owners, Inc.*, 41 AD3d 817, 818-819; *Olson v Brunner*, 261 AD2d 922, 922-923). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint, and properly denied the plaintiff's cross motion for summary judgment dismissing the

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defense based on General Obligations Law § 9-103.

The parties' remaining contentions have been rendered academic by our determination.

RIVERA, J.P., ANGIOLILLO, CHAMBERS and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court