

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1291

CA 11-01332

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

THERESA OVERHOFF, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

BAUER SERVICE, INC., DEFENDANT-RESPONDENT.
(APPEAL NO. 1.)

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP, BUFFALO (ELIZABETH A. KRAENGEL OF COUNSEL), FOR PLAINTIFF-APPELLANT.

BROWN & KELLY, LLP, BUFFALO (RYAN J. MILLS OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Paula L. Feroletto, J.), entered December 9, 2010 in a personal injury action. The judgment, entered upon a jury verdict in favor of defendant and against plaintiff, awarded defendant costs and disbursements.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries that she sustained when she fell upon stepping in a gap in the concrete at a service station owned and operated by defendant. The jury returned a verdict of no cause of action, and Supreme Court denied plaintiff's post-trial motion to set aside the verdict as against the weight of the evidence and for a new trial. Contrary to plaintiff's contention, the verdict is not against the weight of the evidence, i.e., it cannot be said that "the preponderance of the evidence in favor of [plaintiff] is so great that the verdict could not have been reached upon any fair interpretation of the evidence" (*Dannick v County of Onondaga*, 191 AD2d 963, 964; see generally *Lolik v Big V Supermarkets*, 86 NY2d 744, 746).

Entered: December 30, 2011

Frances E. Cafarell
Clerk of the Court