

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

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Argued - November 17, 2017

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
COLLEEN D. DUFFY
FRANCESCA E. CONNOLLY, JJ.

2016-13267

DECISION & ORDER

Lazina Bartholomew, appellant, v Sears Roebuck and Co., et al., respondents.

(Index No. 1707/15)

Sullivan Papain Block McGrath & Cannavo, P.C., New York, NY (Stephen C. Glasser and Susan M. Jaffe of counsel), for appellant.

Lynch Rowin, LLP, New York, NY (Marc Rowin of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Silber, J.), dated November 10, 2016, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly tripped and fell on the base of a directory sign at the defendants' store in Brooklyn. Just prior to the incident, the plaintiff allegedly walked past the directory sign, then walked back and stopped in front of the sign to verify that she was heading in the right direction. She then allegedly tripped and fell on the base as she attempted to step away from the sign.

The plaintiff commenced this action to recover damages for personal injuries, alleging that her injuries were caused by the defendants' negligence. Thereafter, the defendants moved for summary judgment dismissing the complaint, and the Supreme Court granted the motion, determining that the base of the directory sign was open and obvious and not inherently dangerous.

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The plaintiff appeals.

The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the base of the directory sign was open and obvious and not inherently dangerous (*see Gerner v Shop-Rite of Uniondale, Inc.*, 148 AD3d 1122; *Lew v Manhasset Pub. Lib.*, 123 AD3d 1096, 1097; *Koepke v Deer Hills Hardware, Inc.*, 118 AD3d 957; *Casamassa v Waldbaum's Inc.*, 276 AD2d 659, 660). In opposition, the plaintiff failed to raise a triable issue of fact. The expert affidavit submitted by the plaintiff in opposition to the motion was speculative and conclusory, and insufficient to raise a triable issue of fact (*see Zeolla v Town of Stanford*, 134 AD3d 1100, 1101; *Rivas-Chirino v Wildlife Conservation Socy.*, 64 AD3d 556, 558; *Veccia v Clearmeadow Pistol Club*, 300 AD2d 472).

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

MASTRO, J.P., CHAMBERS, DUFFY and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court