

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

D55058  
N/hu

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Argued - January 29, 2018

SHERI S. ROMAN, J.P.  
SANDRA L. SGROI  
FRANCESCA E. CONNOLLY  
LINDA CHRISTOPHER, JJ.

2016-12479

DECISION & ORDER

Carol A. Hopkins, appellant, v St. Agnes Roman  
Catholic Church at Rockville Centre, in County of  
Nassau, State of New York, respondent.

(Index No. 13659/13)

Hopkins & Kopilow, Garden City, NY (Michael T. Hopkins of counsel), for  
appellant.

Mulholland, Minion, Davey, McNiff & Beyrer, Williston Park, NY (Lynn A.  
Waylonis of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Nassau County (Antonio I. Brandveen, J.), entered October 11, 2016.  
The order granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries she  
allegedly sustained when she fell while descending the exterior staircase of a church owned by the  
defendant. The plaintiff alleged that the accident resulted from a difference in riser height between  
steps on the staircase. The defendant moved for summary judgment dismissing the complaint on the  
ground that the alleged dangerous condition was trivial and, therefore, not actionable as a matter of  
law. The Supreme Court granted the defendant's motion, and the plaintiff appeals.

April 11, 2018

Page 1.

HOPKINS v ST. AGNES ROMAN CATHOLIC CHURCH AT ROCKVILLE CENTRE,  
IN COUNTY OF NASSAU, STATE OF NEW YORK


“Generally, the issue of whether a dangerous or defective condition exists depends on the facts of each case and is a question of fact for the jury” (*Pitt v New York City Tr. Auth.*, 146 AD3d 826, 827, citing *Trincere v County of Suffolk*, 90 NY2d 976, 977). “A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses” (*Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 79). “In determining whether a defect is trivial as a matter of law, the court must examine all of the facts presented, ‘including the width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury’” (*Pitt v New York City Tr. Auth.*, 146 AD3d at 828, quoting *Trincere v County of Suffolk*, 90 NY2d at 978 [internal quotation marks omitted]).

Here, the defendant met its prima facie burden for summary judgment by establishing that the alleged defect was trivial as a matter of law (*see Sulca v Barry Hers Realty, Inc.*, 29 AD3d 779, 779; *cf. Schwartz v Reisman*, 135 AD3d 739, 739-740; *Swerdlow v WSK Props. Corp.*, 5 AD3d 587, 588). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Accordingly, the Supreme Court properly granted the defendant’s motion for summary judgment dismissing the complaint.

ROMAN, J.P., SGROI, CONNOLLY and CHRISTOPHER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court