

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

D56341  
L/htr

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Argued - March 26, 2018

JOHN M. LEVENTHAL, J.P.  
SANDRA L. SGROI  
HECTOR D. LASALLE  
VALERIE BRATHWAITE NELSON, JJ.

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2016-08993

DECISION & ORDER

Carmen Fuentes, respondent, v Maria Theodore,  
appellant.

(Index No. 501392/14)

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McCabe, Collins, McGeough, Fowler, Levine & Nogan, LLP, Carle Place, NY  
(Patrick M. Murphy and Brian J. McGeough of counsel), for appellant.

Rosenbaum & Rosenbaum, P.C., New York, NY (Matthew T. Gammons and Kevin  
Johnson of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Larry D. Martin, J.), dated August 15, 2016. The order denied the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

The plaintiff allegedly was injured on the defendant's property when she fell while attempting to descend a stepladder. The plaintiff commenced this action to recover damages for her personal injuries, and the defendant moved for summary judgment dismissing the complaint. In an order dated August 15, 2016, the Supreme Court denied the motion. The defendant appeals.

The defendant established her prima facie entitlement to judgment as a matter of law by submitting evidence that no dangerous or defective condition existed with respect to the stepladder (*see Bernal v 521 Park Ave. Condo*, 128 AD3d 750; *Balashanskaya v Polymed Community Care Ctr., P.C.*, 122 AD3d 558, 559). In particular, both the plaintiff and the defendant testified at their depositions that they had previously used the stepladder without incident, and the


evidence demonstrated that the stepladder was stable. While the plaintiff had previously noticed a “white substance” on the stepladder, she testified that the substance, which she had previously “walked on,” did not render the stepladder “slippery or anything like that.” Further, although the plaintiff testified that, upon inspecting the stepladder a few months after the accident, she “felt something” in the area of the stepladder where she observed the “white substance,” she did not testify that the substance felt sticky or slippery.

In opposition to this prima facie showing, the plaintiff failed to raise a triable issue of fact. The plaintiff merely submitted the affidavit of an expert who inspected the stepladder four years after the accident and speculated as to what the “white substance” might have been and the condition of the substance at the time of the accident (*see Martirosyan v Antreasyan*, 153 AD3d 616, 616-617).

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

LEVENTHAL, J.P., SGROI, LASALLE and BRATHWAITE NELSON, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court