

Daniels v Rite Aid Corp.
2010 NY Slip Op 31314(U)
May 6, 2010
Supreme Court, Nassau County
Docket Number: 8169/08
Judge: F. Dana Winslow
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SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

MARY E. DANIELS,

**TRIAL/IAS, PART 5
NASSAU COUNTY**

Plaintiffs,

-against-

**MOTION SEQ. NO.:002
MOTION DATE:2/26/10**

RITE AID CORPORATION, RITE AID CORPORATION AND AFFILIATES, RITE AID OF NEW YORK CITY, INC d/b/a RITE AID OF NEW YORK, INC., NOEL KOEPEL, as Co-Executor of the Estate of EZIEL HALPERN, deceased and SANDRA HALPERN, as Co-Executrix of the Estate of EZIEL HALPERN, deceased,

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Defendants.

The following papers having been read on the motion (numbered 1-3):

Notice of Motion.....	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3

Motion pursuant to CPLR 3212 by the defendants Rite Aid Corporation, *et.*, *al.*, for summary judgment dismissing the complaint.

On January 12, 2007, the plaintiff Mary E. Daniels was shopping in a Rite Aid store located in Jamaica, Queens. Daniels walked toward the front section of the store, where she intended to pay at the cash register area for the items she had selected (Daniels Dep., 72-75).

As Daniels approached the register area, she noticed two approximately waist-high, box-shaped discount display tables or platforms— one filled with candy items, one empty. The table were arranged so that there was approximately one

foot of space between them (Daniels Dep., 75-79; Ramjeet Dep., 30, 32).

Daniels approached the display tables – which had no supporting legs – and then walked between them, while at the same time reaching into the table to her left so as to select a discount item (Daniels Dep., 77-81).

After she had selected the item, she proceeded between the two tables towards the registers, which were some five feet to her left. At this juncture, Daniel's left foot came into contact with the base of one of the tables and she fell to the floor on her left side, allegedly injuring herself (Daniels Dep., 75-79, 88-90, 93-94). The base-area of the discount table where Daniels' foot became caught was visible, unobscured and did not move when her foot impacted it (Daniels Dep., 93-94, 103).

Rite Aide Store Manager Ken Ramjeet testified in sum that there was a clear or wide open aisle area by which customers could access the four cash registers located in the store (Ramjeet Dep., 19-20, 29-30). The two display tables were situated between the last cash register and a photo area some 15 feet from the register (Ramjeet Dep., 30-31).

According to Ramjeet, there was a Rite Aid manual which prescribed guidelines relating to aisle and display clearance distances, and that pursuant to that manual, a minimum clearance of at least 36 inches was required "around" the display (Ramjeet Dep., 50-51, 67).

Ramjeet testified that he based these requirements on a Rite Aid handbook entitled, "Principles of Merchandise Presentation" (Rubine Aff., Exh., "J"). Among other things, the attached handbook excerpts contain a "store layout" section and subparagraphs therein entitled "Fixture Footages," "Floor Displays" and "Case Stacks". Printed text under these various subparagraphs collectively states in part that "fixture length is dictated by the size of the store and its available space," and that in general, floor displays and case stacks should not

restrict traffic and can be placed in “surge areas” of the store.

An additional but separate subparagraph entitled, “Aisle Widths,” provides that “Aisle widths vary slightly within any given store” – a directive qualified by the caveat that “[a]isle widths may never be less than the government standard set by the American Disabilities Act (ADA), which currently has set 36" as the minimum width” (Rubine Aff., Exh., “J” at 3.8 [January, 2008 ed])(Ramjeet Dep., 33-35, 51, 67).

By summons and verified complaint dated April 2008, the plaintiff commenced the within personal injury action against, *inter alia*, various Rite Aid entities, including the Rite Aid Corporation [collectively “Rite Aid”].

Rite Aid has answered, denied the material allegations of the complaint and interposed various affirmative defenses. Discovery has since been conducted and Rite Aid now moves for summary judgment dismissing the complaint insofar as asserted against it. Rite Aid’s motion should be granted.

“A landowner has a duty to maintain its property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to third parties, the potential seriousness of the injury and the burden of avoiding the risk” (*Boderick v. RY Management Co., Inc.*, 71 AD3d 144 *see also*, *Basso v. Miller*, 40 NY2d 233, 241 [1976]).

Similarly, “[w]henver the general public is invited into stores, office buildings and other places of public assembly, the owner is charged with the duty of providing the public with a reasonably safe premises, including a safe means of ingress and egress” (*Gallagher v. St. Raymond's R.C. Church*, 21 NY2d 554, 557 [1968] *see also*, *Peralta v. Henriquez*, 100 NY2d 139, 143 [2003]; *Basso v. Miller*, *supra*; *Gradwohl v. Stop & Shop Supermarket Co., LLC*, 70 AD3d 634, 636).

“However, a landowner has no duty to protect or warn against an open and obvious condition which, as a matter of law, is not inherently dangerous” (*see*,

Rivas-Chirino v. Wildlife Conservation Soc., 64 AD3d 556, 557; *Espinoza v. Hemar Supermarket, Inc.*, 43 AD3d 855, 856 *see also*, *Weiss v. Half Hollow Hills Cent. School Dist.*, 70 AD3d 932, 933; *Stern v. Costco Wholesale*, 63 AD3d 1139, 1140). Nor will liability attach when the condition is open and obvious and/or “can be recognized simply as a matter of common sense” (*Smith v. Stark*, 67 NY2d 693, 694 [1986]; *Giambruno v. Wilbur F. Breslin Development Corp.*, 56 AD3d 520, 521 *see also*, *Tagle v. Jakob*, 97 NY2d 165, 169 [2001]; *Espinoza v. Hemar Supermarket, Inc.*, 43 AD3d 855, 856).

Upon the evidence presented, Rite Aid has demonstrated its *prima facie* entitlement to judgment as a matter of law (*see generally*, *Bretts v. Lincoln Plaza Associates, Inc.*, 67 AD3d 943, 944-945; *Stern v. Costco Wholesale, supra*).

More particularly, the plaintiff’s deposition testimony establishes, *inter alia*, that neither the tables nor the manner in which they were placed on the sales floor, created an inherently dangerous condition (*Marchetti v. Modica*, 65 AD3d 1095; *Speirs v. Dick’s Clothing & Sporting Goods, Inc.*, 268 AD2d 581, 582). Moreover, the tables’ relative proximity to each other and their position in the store itself was open, obvious and “readily observable to those employing the reasonable use of their senses” (*Giambruno v. Wilbur F. Breslin Development Corp., supra*, 56 AD3d 520, 521 *see also*, *Tagle v. Jakob, supra*; *Mareno v. Shorestein Realty Services, L.P.*, 44 AD3d 911, 912; *Maravalli v. Home Depot U.S.A., Inc.*, 266 AD2d 437; *Lamia v. Federated Dept. Stores, Inc.*, 263 AD2d 498).

The plaintiff herself testified that the base portion of the display table was neither obscured nor hidden in any sense (*Gagliardi v. Walmart Stores, Inc.*, 52 AD3d 777; *Chiranky v. Marshalls, Inc.*, 273 AD2d 266; *Maravalli v. Home Depot U.S.A., Inc., supra*; *Lamia v. Federated Dept. Stores, Inc., supra*).

In opposition to Rite Aid’s *prima facie* showing, the plaintiff has failed to

raise a triable issue of fact. The plaintiff's reliance on Rite Aid's Merchandise "Layout" guidelines is misplaced since the guidelines attached to the plaintiff's submissions do not impose a mandatory, 36-inch clearance requirement applicable to multiple display table arrangements.

Rather, the subject manual – on which Mr. Ramjeet's testimony was clearly based – (Ramjeet Dep., 33-34; 50-51, 67), merely refers to, and prescribes general guidelines for, *inter alia*, fixtures, displays and case stacks. The manual's subsequent reference to "36 inches" of clearance is contained in a separate subsection entitled "Aisle Widths" – which section addresses the distinct issue of store-wide "aisles".

The Court has considered the plaintiff's remaining contentions and concludes that they are lacking in merit.

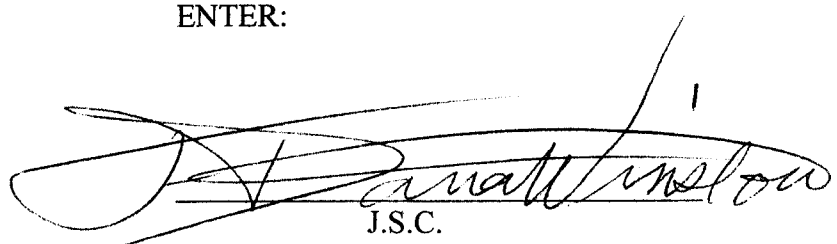
Accordingly, it is,

ORDERED the motion pursuant to CPLR 3212 by the defendants Rite Aid Corporation, *et. al.*, for summary judgment dismissing the complaint, is **granted**.

This Constitutes the Order of the Court.

Dated: 5/6/10

ENTER:


J.S.C.

ENTERED
MAY 20 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE