

Frances Hillock et al., Appellants, v. Home Depot USA, Respondent, et al., Defendant.

1999-08617

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

273 A.D.2d 357; 710 N.Y.S.2d 908; 2000 N.Y. App. Div. LEXIS 7092

May 10, 2000, Submitted

June 19, 2000, Decided

PRIOR HISTORY: [**1] In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (J. Leone, J.), dated August 3, 1999, which granted the motion of the defendant Home Depot USA for summary judgment dismissing the complaint insofar as asserted against it.

COUNSEL: Kirschenbaum & Kirschenbaum, P.C., Garden City, N.Y. (Stuart R. Goldstein of counsel), for appellants.

Thomas M. Bona, P.C., White Plains, N.Y. (Robert H. Steindorf and Stephanie K. Cervoni of counsel), for respondent.

JUDGES: O'Brien, J. P., Altman, Friedmann, McGinity and Smith, JJ., concur.

OPINION

[*357] Ordered that the order is affirmed, with costs.

The plaintiff Frances Hillock allegedly was injured when she slipped and fell on a piece of hot dog inside the store of the respondent, Home Depot USA. After the respondent made a prima facie showing of entitlement to judgment as a matter of law, the plaintiffs failed to establish that the respondent either created, or had actual or constructive notice of, the allegedly dangerous condition which caused the injured plaintiff to fall (*see, Andrus v National Westminster Bank*, 266 AD2d 171; *Doherty v Great Atl. & Pac. Tea Co.*, 265 AD2d 447; [**2] *Schultz v New York Racing Assn.*, 253 AD2d 489; *Strowman v Great Atl. [*358] & Pac. Tea Co.*, 252 AD2d 384).

O'Brien, J. P., Altman, Friedmann, McGinity and Smith, JJ., concur.