

Ackerman v Iskhakov
2016 NY Slip Op 04008 [139 AD3d 987]
May 25, 2016
Appellate Division, Second Department
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[*1] (May 25, 2016)

Toba Faigi Ackerman et al., Appellants, v Alex Iskhakov et al., Respondents.
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Berman, Schulman & Levine, Brooklyn, NY (Aron F. Rattner and Jennifer Shafer of counsel), for appellants.

Nicolini, Paradise, Ferretti & Sabella, Mineola, NY (Anthony J. Abruscati of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Kings County (Bayne, J.), dated March 18, 2015, which granted the defendants' motion for summary judgment dismissing the complaint.

Ordered that the order is affirmed, with costs.

The plaintiff Toba Faigi Ackerman (hereinafter the injured plaintiff) allegedly was injured when she tripped and fell while ascending the exterior cement front steps of the defendants' home. Thereafter, the injured plaintiff, and her husband suing derivatively, commenced this action against the defendants. After the completion of discovery, the defendants moved for summary judgment dismissing the complaint. The Supreme Court granted the motion.

The defendants established their prima facie entitlement to judgment as a matter of law by submitting, inter alia, a transcript of the injured plaintiff's deposition testimony, in which she was unable to identify the cause of her fall (*see Williams v Vines*, 128 AD3d 1056 [2015]; *Grossi v Ralph Aievoli & Son, Inc.*, 125 AD3d 803, 804 [2015]; *Peluso v Red Rose Rest., Inc.*, 106 AD3d 972 [2013]). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The injured plaintiff's affidavit, which was submitted in opposition to the motion, failed to raise a triable issue of fact since it presented what appear to be feigned issues of fact designed to avoid the consequences of her earlier deposition testimony (*see*

Bryant v Loft Bookstore Café, LLC, 138 AD3d 664 [2016]; *Zhu v Natale*, 131 AD3d 607, 608 [2015]; *Viviano v KeyCorp*, 128 AD3d 811, 812 [2015]). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint. Dillon, J.P., Chambers, Barros and Brathwaite Nelson, JJ., concur.