

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1636

CA 09-01131

PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ.

ELEANORE MUTO, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ROMAN CATHOLIC CHURCH OF ST. JOHN THE
EVANGELIST AND ST. JOHN THE EVANGELIST
CHURCH OF GREECE, DEFENDANTS-APPELLANTS.

CHARLES A. HALL, ROCHESTER, FOR DEFENDANTS-APPELLANTS.

THE KAMMHOLZ LAW FIRM, FAIRPORT (BRADLEY P. KAMMHOLZ OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (David M. Barry, J.), entered March 31, 2009 in a personal injury action. The order denied the motion of defendants for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained when she allegedly tripped on a floor mat on property owned and occupied by defendants, causing her to fall. Contrary to the contention of defendants, Supreme Court properly denied their motion for summary judgment dismissing the complaint. By their own submissions, defendants raised a triable issue of fact whether they had notice that the condition of the floor mat on the day of plaintiff's fall rendered it a tripping hazard (see *Groth v BJ's Wholesale Club, Inc.*, 59 AD3d 1086; cf. *Quinn v Holiday Health & Fitness Ctrs. of N.Y., Inc.*, 15 AD3d 857; see generally *Zuckerman v City of New York*, 49 NY2d 557, 562).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court