

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

1700.1

CA 09-01814

PRESENT: SMITH, J.P., FAHEY, CARNI, AND GREEN, JJ.

MICHAEL TREGLIA, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

COLGATE UNIVERSITY, DEFENDANT-APPELLANT.

WEBSTER SZANYI LLP, BUFFALO (MICHAEL P. MCCLAREN OF COUNSEL), FOR
DEFENDANT-APPELLANT.

LYNN LAW FIRM, LLP, SYRACUSE (PATRICIA A. LYNN-FORD OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (Norman I. Siegel, A.J.), entered May 28, 2009 in a personal injury action. The order denied defendant's motion for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed with costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries he sustained when he struck his head on an open window grate at defendant's gymnasium. Supreme Court properly denied defendant's motion seeking summary judgment dismissing the complaint. Even assuming, arguendo, that defendant met its initial burden on the motion, we conclude that plaintiff's submissions in opposition to the motion raise a triable issue of fact whether defendant had constructive notice of the allegedly defective condition of the window grate (see *Champagne v Peck*, 59 AD3d 1130; *George v New York City Tr. Auth.*, 41 AD3d 143; *Alexander v New York City Tr.*, 34 AD3d 312, 313-314). We reject the contention of defendant that it is entitled to judgment as a matter of law on the issue of proximate cause inasmuch as defendant failed to demonstrate that plaintiff's injury was not the result of the allegedly defective condition of the window grate (see *Powers v St. Bernadette's R.C. Church*, 309 AD2d 1219).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court