

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT**

Cordova v. Union Turnpike Development Corp.

75 A.D.3d 573 (2d Dep't 2010) · Decided July 20, 2010

OPINION

PER CURIAM.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Agate, J.), dated May 8, 2009, which granted the motion of the defendants Union Turnpike Development Corp., Junction Blvd. Towers, Inc., and Boston Construction Corp. for summary judgment dismissing the complaint insofar as asserted against them.

Ordered that the order is reversed, on the law, with costs, and the motion of the defendants Union Turnpike Development Corp., Junction Blvd. Towers, Inc., and Boston Construction Corp. for summary judgment dismissing the complaint insofar as asserted against them is denied.

The plaintiff allegedly sustained personal injuries when she tripped and fell due to a hole in a sidewalk. At the time of the accident, construction work was taking place near the subject *574sidewalk. The plaintiff alleged that heavy machines and trucks traversed the subject sidewalk to gain access to the construction site.

The respondents moved for summary judgment, contending only that they did not create or have actual or constructive notice of the alleged defect. The Supreme Court granted the motion. We reverse. The respondents failed to meet their initial burden of demonstrating the absence of any triable issues of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Contrary to the respondents' contention, triable issues of fact exist as to whether the respondents created or had actual or constructive notice of the defective sidewalk. In light of this determination, we need not examine the sufficiency of the plaintiffs opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Accordingly, the Supreme Court should have denied the respondents' motion for summary judgment. Fisher, J.P., Co vello, Hall and Sgroi, JJ., concur.