

60 A.D.3d 887, 875 N.Y.S.2d 274, 2009 N.Y. Slip Op. 02315
(Cite as: 60 A.D.3d 887, 875 N.Y.S.2d 274)

H

Supreme Court, Appellate Division, Second Department, New York.
Terence CLARK, plaintiff,


v.

GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., respondent,
City of White Plains, appellant,
(And a third-party action).
March 24, 2009.

Background: Pedestrian who was injured when he fell on public sidewalk brought personal injury action against corporation and city. The Supreme Court, Westchester County, Giacomo, J., granted corporation's motion for summary judgment dismissing complaint and all cross claims insofar as asserted against it. City appealed.

Holding: The Supreme Court, Appellate Division, held that corporation established its entitlement to judgment as matter of law.
So ordered.

West Headnotes

Judgment 228  **185.3(21)**

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.3 Evidence and Affidavits in Particular Cases

228k185.3(21) k. Torts. Most Cited Cases

Corporation, moving for summary judgment in personal injury action brought by pedestrian who slipped and fell on public sidewalk, established its entitlement to judgment as a matter of law by showing that it did not make a special use of sidewalk, and that there was no statute or ordinance pursuant to which liability could be imposed upon it.

****275** Joseph A. Maria, P.C., White Plains, N.Y. (Melissa-Jean Rotini of counsel), for appellant.

Boeggeman, George & Corde, P.C., White Plains, N.Y. (Cynthia Dolan of counsel), for respondent.

ROBERT A. SPOLZINO, J.P., MARK C. DILLON, ANITA R. FLORIO and DANIEL D. ANGIOLILLO, JJ.

***887** In an action to recover damages for personal injuries, the defendant City of White Plains appeals from an order of the Supreme Court, Westchester County (Giacomo, J.), entered September 11, 2007, which granted the motion of the defendant Great Atlantic & Pacific Tea Company, Inc., for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the appeal from so much of the order as granted that branch of the motion of the defendant Great Atlantic & Pacific Tea Company, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it is dismissed, as the appellant is not aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

In response to the demonstration of the defendant Great Atlantic & Pacific Tea Company, Inc., of its entitlement to judgment as a matter of law by showing that it did not make a special use of the public sidewalk where the plaintiff fell, and that there was no statute or ordinance pursuant to which liability could be imposed upon it (*see* ***888** *Hausser v. Giunta*, 88 N.Y.2d 449, 452-453, 646 N.Y.S.2d 490, 669 N.E.2d 470; *Biondi v. County of Nassau*, 49 A.D.3d 580, 853 N.Y.S.2d 381; *Noia v. Maselli*, 45 A.D.3d 746, 846 N.Y.S.2d 326) the appellant failed to submit evidence sufficient to raise a triable issue

60 A.D.3d 887, 875 N.Y.S.2d 274, 2009 N.Y. Slip Op. 02315
(Cite as: 60 A.D.3d 887, 875 N.Y.S.2d 274)

of fact (see generally *Alvarez v. Prospect Hosp.*, 68
N.Y.2d 320, 324-325, 508 N.Y.S.2d 923, 501
N.E.2d 572).

N.Y.A.D. 2 Dept., 2009.
Clark v. Great Atlantic & Pacific Tea Co., Inc.
60 A.D.3d 887, 875 N.Y.S.2d 274, 2009 N.Y. Slip
Op. 02315

END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.