



Susan Leary, Appellant, v Dallas BBQ et al., Respondents, et al., Defendants.

6576, 114242/07

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

91 A.D.3d 519; 936 N.Y.S.2d 541; 2012 N.Y. App. Div. LEXIS 261; 2012 NY Slip Op 295

January 19, 2012, Decided  
January 19, 2012, Entered

**PRIOR HISTORY:** *Leary v Dallas BBQ*, 2011 N.Y. Misc. LEXIS 155 (N.Y. Sup. Ct., Jan. 20, 2011)

cross claims against them, unanimously affirmed, without costs.

**HEADNOTES**

Negligence--Sidewalks--Trip and Fall Over Segment of Police Barricade Lying on Sidewalk

**COUNSEL:** [\*\*\*1] Shapiro Law Offices, PLLC, Bronx (Ernest S. Buonocore of counsel), for appellant.

Lewis Brisbois Bisgaard & Smith, LLP, New York (Nicholas P. Hurzeler of counsel), for respondents.

**JUDGES:** Andrias, J.P., Sweeny, Moskowitz, Renwick, Freedman, JJ. Concur--Andrias, J.P., Sweeny, Moskowitz, Renwick, and Freedman, JJ.

**OPINION**

[\*\*541] [\*519] Order, Supreme Court, New York County (Lottie E. Wilkins, J.), entered January 27, 2011, which, to the extent appealed from, granted defendants-respondents' (Dallas BBQ) motion for summary judgment dismissing the complaint and all

The motion court properly granted Dallas BBQ's summary judgment motion in this action for personal injuries allegedly sustained after plaintiff tripped and fell over a segment of a wooden police barricade lying on the sidewalk near the northwest intersection of 23rd Street and Eighth Avenue in Manhattan. Dallas BBQ, lessee of the premises near the intersection, established, prima facie, its entitlement to summary judgment. It was neither abutting owner for purposes of the *Administrative Code of City of NY 7-210* nor did it create or have constructive notice of the condition, and it owed no duty to plaintiff for the maintenance of the abutting sidewalk under the alleged [\*\*\*2] circumstances (*see Collado v Cruz*, 81 AD3d 542, 917 NYS2d 178 [2011]; *Berkowitz v Dayton Constr.*, 2 AD3d 764, 765, 769 NYS2d 730 [2003]). In opposition, plaintiff failed to raise a triable issue of fact as to any theory of duty on the part of Dallas BBQ. Concur--Andrias, J.P., Sweeny, Moskowitz, Renwick, and Freedman, JJ. [Prior Case History: 2011 NY Slip Op 30195(U).]