

Richter, J.P., Tom, Mazzarelli, Gesmer, Moulton, JJ.

6947 Adine Davis,
Plaintiff-Respondent,

Index 22997/12E

-against-

Pathmark, et al.,
Defendants-Appellants,

Bruckner Plaza Shopping Center, LLC,
Defendant.

Mound Cotton Wollan & Greengrass LLP, New York (William D. Wilson of counsel), for appellants.

Pollack Pollack Isaac & DeCicco, LLP, New York (Brian J. Isaac of counsel), for respondent.

Order, Supreme Court, Bronx County (Lizbeth Gonzalez, J.), entered September 20, 2017, which granted plaintiff's motion to strike the answer of defendants Pathmark and Pathmark Store, Inc. pursuant to CPLR 3126, and thereupon granted plaintiff summary judgment on the issue of liability, unanimously affirmed, without costs.

Although it was demanded within days of plaintiff's slip and fall, defendants failed to preserve a video recording of its store that depicted the area of plaintiff's fall prior to it occurring. Instead, a store employee selectively edited the video to retain only that portion showing approximately 30

seconds prior to plaintiff's fall and the fall itself. Without the video recording, plaintiff may be unable to establish the origin of the liquid on the floor that she claims caused her to fall, and thus be unable to establish the requisite notice of the alleged condition (see *Vincent L. v AKS 183rd St. Realty Corp.*, 118 AD3d 602 [1st Dept 2014]; *Bear, Stearns & Co. v Enviropower, LLC*, 21 AD3d 855 [1st Dept 2005], *appeal dismissed* 6 NY3d 750 [2005]). Despite a court order and a discovery conference stipulation, defendants failed to explain why the remainder of the video became unavailable.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 21, 2018


CLERK