

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D21377  
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Argued - November 17, 2008

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2007-09525

DECISION & ORDER

Carol Pastore, respondent, v Town of Harrison,  
appellant.

(Index No. 13427/05)

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Joseph A. Maria, P.C., White Plains, N.Y. (Edward A. Frey of counsel), for appellant.

Spiegel & Barbato, LLP, Bronx, N.Y. (Brian C. Mardon of counsel), for respondent.

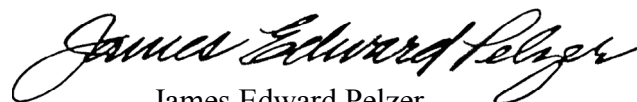
In an action to recover damages for personal injuries, the defendant appeals from so much of an order of the Supreme Court, Westchester County (Giacomo, J.), entered September 10, 2007, as, in effect, granted that branch of the plaintiff's motion which was for summary judgment against it on the issue of the defendant's negligence.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In opposition to the plaintiff's prima facie showing that the defect which caused her trip-and-fall accident was created by the defendant's negligence in repairing the roadway in question (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), the defendant failed to raise a triable issue of fact (*see CPLR 3212[b]*). Furthermore, proof that a dangerous condition is open and obvious does not preclude a finding of negligence against a landowner for the failure to maintain the property in a safe condition, but is relevant on the issue of the plaintiff's comparative negligence (*see Cupo v Karfunkel*, 1 AD3d 48, 52). Accordingly, the Supreme Court properly awarded summary judgment to the plaintiff on the issue of the defendant's negligence.

FISHER, J.P., ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

December 9, 2008

PASTORE v TOWN OF HARRISON