

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

D23182
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_____AD3d_____

Submitted - February 3, 2009

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2008-02122

DECISION & ORDER

Miriam Samuels, etc., et al., appellants, v Chap
A Nosh of Cedarhurst, Inc., et al., respondents.

(Index No. 3379/06)

Morrison & Wagner, LLP, New York, N.Y. (Stuart Wagner of counsel), for appellants.

Jacobson & Schwartz, Rockville Centre, N.Y. (Henry J. Cernitz of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Nassau County (Cozzens, J.), dated January 10, 2008, which granted the defendants' motion for summary judgment dismissing the complaint. Justice Dickerson has been substituted for former Associate Justice Ritter (*see* 22 NYCRR 670.1[c]).

ORDERED that the order is affirmed, with costs.

The plaintiff Miriam Samuels allegedly was injured when she slipped and fell on what she described as a greasy substance on the floor outside the manager's office in a store operated by the defendant Chap A Nosh of Cedarhurst, Inc. (hereinafter Chap A Nosh). In order to prevail on their motion for summary judgment dismissing the complaint, the defendants were required to demonstrate that they neither created the allegedly dangerous condition nor had actual or constructive notice of it (*see* *Cunningham v Bay Shore Middle School*, 55 AD3d 778; *Pomerantz v Culinary Inst. of Am.*, 2 AD3d 821; *Luciani v Waldbaum, Inc.*, 304 AD2d 537). As conceded by the plaintiffs, the defendants made that showing. In opposition, the plaintiffs failed to raise a triable issue of fact. The

May 19, 2009

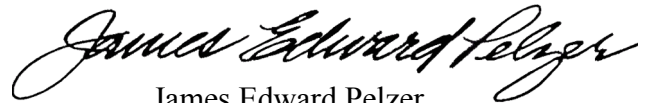
SAMUELS v CHAP A NOSH OF CEDARHURST, INC.

Page 1.

plaintiffs' contention that the condition may have been created by a Chap A Nosh chef who might have tracked grease from the kitchen is purely speculative (*see Pomerantz v Culinary Inst. of Am.*, 2 AD3d at 821-822; *Luciani v Waldbaum, Inc.*, 304 AD2d at 537).

SPOLZINO, J.P., MILLER, BALKIN and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court