

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

D23292
O/prt

_____AD3d_____

Submitted - April 21, 2009

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-04388

DECISION & ORDER

Sharon Williams, etc., appellant, v
Fazil Azeem, et al., respondents.

(Index No. 20541/05)

Ginsberg & Broome, P.C., New York, N.Y. (Robert M. Ginsberg of counsel), for appellant.

Newman and Newman, LLP, Jamaica, N.Y. (Erwin B. Newman of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Nelson, J.), dated April 29, 2008, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff's decedent allegedly tripped and fell over a raised water valve cap in a public sidewalk abutting the defendants' premises. The defendants established their entitlement to judgment as a matter of law by demonstrating that they did not negligently construct or repair the sidewalk, otherwise cause the defective condition, cause the defect to occur by some special use of the sidewalk, or breach a specific ordinance or statute which obligated the occupant to maintain the sidewalk (*see Hausser v Giunta*, 88 NY2d 449, 452-453; *Biondi v County of Nassau*, 49 AD3d 580; *Jacobs v Village of Rockville Ctr.*, 41 AD3d 539). In opposition, the plaintiff failed to raise a triable issue of fact as to whether, inter alia, the defendants made special use of the sidewalk (*see Noia v Maselli*, 45 AD3d 746).

May 26, 2009

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The plaintiff's remaining contention is without merit.

MASTRO, J.P., SKELOS, DICKERSON and LOTT, 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