

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

D23945  
O/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 11, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
PLUMMER E. LOTT, JJ.

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2008-09112

DECISION & ORDER

Nora Bittner, respondent, v Town of Islip,  
appellant, et al., defendant.

(Index No. 23804/06)

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John P. Finnerty, Bay Shore, N.Y., for appellant.

In an action to recover damages for personal injuries, the defendant Town of Islip appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Mayer, J.), dated September 2, 2008, as denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion of the defendant Town of Islip for summary judgment dismissing the complaint insofar as asserted against it is granted.

The defendant Town of Islip established its entitlement to judgment as a matter of law by demonstrating, prima facie, that it did not have prior written notice of a defect on a sidewalk that allegedly caused the plaintiff to fall (*see* Town Law § 65-a[2]; *Scafidi v Town of Islip*, 34 AD3d 669; *Augustine v Town of Islip*, 28 AD3d 503). In opposition, the respondents failed to submit evidence sufficient to raise a triable issue of fact (*see Granderson v City of White Plains*, 29 AD3d 739, 740; *Sommer v Town of Hempstead*, 271 AD2d 434). Accordingly, the Supreme Court should have granted the Town's motion for summary judgment dismissing the complaint insofar as asserted against it.

July 14, 2009

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In light of our determination, we need not reach the Town's remaining contentions.

SPOLZINO, J.P., SANTUCCI, FLORIO and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer  
Clerk of the Court