

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

D12452
O/cb

_____AD3d_____

Argued - September 8, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2006-00218

DECISION & ORDER

Donna Crawford, et al., respondents, v Forest Hills
Gardens, defendant, John Guck, et al., appellants.

(Index No. 31232/03)

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for appellants.

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

In an action to recover damages for personal injuries, etc., the defendants John Guck
and Joan Guck appeal from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated
October 31, 2005, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff Donna Crawford was injured when a tree on the appellants' property
blew over and fell on her car. No liability attaches to a landowner whose tree falls and injures another
unless there exists actual or constructive knowledge of the defective condition of the tree (*see*
Ivancic v Olmstead, 66 NY2d 349, 350-351).

The Supreme Court properly denied the appellants' motion for summary judgment.
In response to the appellants' demonstration of entitlement to judgment as a matter of law, the
plaintiffs offered the affidavit of their expert which raised a triable issue of fact as to whether the tree
presented a "readily-observable manifestation of decay" that should have alerted the appellants to the

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defective condition (*cf. Ivancic v Olmstead, supra; Harris v Village of East Hills, 41 NY2d 446; Lahowin v Ganley, 265 AD2d 530*).

SCHMIDT, J.P., SANTUCCI, FISHER and COVELLO, 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