

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

D12869
G/mv

_____AD3d_____

Argued - September 5, 2006

THOMAS A. ADAMS, J.P.
GLORIA GOLDSTEIN
WILLIAM F. MASTRO
ROBERT A. LIFSON, JJ.

2005-08152

DECISION & ORDER

Givi Kobiashvilli, et al., plaintiffs-respondents, v
Mitchell Hill, et al., defendants-respondents, Valange
Garage Services, Inc., appellant, et al., defendant.

(Index No. 5331/98)

James P. Nunemaker, Jr., Uniondale, N.Y. (Nancy S. Goodman of counsel), for
appellant.

Hart & Hart, LLP, New York, N.Y. (Jeffrey C. Ruderman and Avely Hart of
counsel), for plaintiffs-respondents.

Bee Ready Fishbein Hatter & Donovan, LLP, Mineola, N.Y. (Robert M. Conti of
counsel), for defendants-respondents.

In an action to recover damages for personal injuries, etc., the defendant Valange
Garage Services, Inc., appeals, as limited by its brief, from so much of an order of the Supreme
Court, Queens County (Dollard, J.), dated August 1, 2005, as, upon granting the plaintiffs' motion
to vacate an order of the same court dated September 25, 2001, which, upon their default, granted
its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted
against it, denied its motion for summary judgment dismissing the complaint and all cross claims
insofar as asserted against it.

ORDERED that the order dated August 1, 2005, is reversed insofar as appealed from,
on the law, with one bill of costs, and the motion of the defendant Valange Garage Services, Inc., for
summary judgment dismissing the complaint and all cross claims insofar as asserted against it is
granted.

November 28, 2006

KOBIASHVILLI v HILL

Page 1.

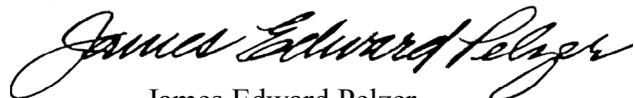
The facts of this case are described in a companion appeal (*see Kobiashvilli v Hill*, _____AD3d_____ [Appellate Division Docket No. 2002-00161, decided herewith]). As in that case, on its motion for summary judgment, the appellant established prima facie that it did not create the allegedly dangerous condition and did not have actual notice of it. On the question of constructive notice, the appellant established its entitlement to judgment as a matter of law by submitting proof that “the length of time for which the [defect] existed was unknown” (*Perlongo v Park City 3 & 4 Apts.*, 31 AD3d 409), and a finding that the debris was present for a sufficient length of time to be discovered would be pure speculation (*see DeLeon v New York City Tr. Auth.*, 5 AD3d 531).

There is no evidence in this record that the nature of the establishment required frequent inspections for debris (*see Yioves v T.J. Maxx*, 29 AD3d 572; *Britto v Great Atl. & Pac. Tea Co.*, 21 AD3d 436; *Joachim v 1824 Church Ave*, 12 AD3d 409; *Tucci v Stewart’s Ice Cream*, 296 AD2d 650; *Altieri v Golub Corp.*, 292 AD2d 734; *Mancini v Quality Mkts.*, 256 AD2d 1177). On the question of a recurring condition, the plaintiffs bore the burden of submitting evidence that the appellants had actual notice of such a condition (*see Stone v Long Is. Jewish Med. Ctr.*, 302 AD2d 376). The injured plaintiff’s conclusory statements in his affidavit were insufficient to raise a triable issue of fact on that issue (*see Grottano v City of New York*, 304 AD2d 713).

Accordingly, upon vacatur of the plaintiffs’ default, the appellant was entitled to summary judgment on the merits.

ADAMS, J.P., GOLDSTEIN, MASTRO and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court