

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

D13287
C/mv

_____AD3d_____

Argued - November 27, 2006

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
ROBERT A. SPOLZINO, JJ.

2005-08342

DECISION & ORDER

Angela Newman, appellant, v Consolidated Edison Company of New York, Inc., defendant third-party plaintiff-respondent; Benjamin Enterprises, Inc., third-party defendant.

(Index No. 1429/04)

Taubman Kimelman & Soroka, LLP, New York, N.Y. (Antonette M. Milcetic, Philip E. Taubman, and Julius Gantman of counsel), for appellant.

Richard W. Babinecz, New York, N.Y. (Helman R. Brook of counsel), for defendant third-party plaintiff-respondent.

Harrington, Ocko & Monk, LLP, White Plains, N.Y. (I. Paul Howansky of counsel), for third-party defendant.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Dillon, J.), entered July 20, 2005, as granted the defendant third-party plaintiff's cross motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs payable by the respondent, and the cross motion for summary judgment dismissing the complaint is denied.

December 26, 2006

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NEWMAN v CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

The plaintiff allegedly slipped and fell on wet steps at a building owned by the defendant. On its motion for summary judgment dismissing the complaint, the defendant third-party plaintiff established its prima facie entitlement to judgment as a matter of law. In opposition, the plaintiff submitted evidence sufficient to raise a triable issue of fact as to whether the steps were wet for a sufficient length of time before the accident such that the defendant had constructive notice of the condition (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837; *Bevilacqua v Club Azzurro*, 8 AD3d 599, 600; *Rockowitz v City of New York*, 255 AD2d 434; *Qevani v 1957 Bronxdale Corp.*, 232 AD2d 284; *Huth v Allied Maintenance Corp.*, 143 AD2d 634, 635-636). The alleged open and obvious nature of the condition only raised a triable issue of fact as to the comparative fault of the plaintiff (*see Cupo v Karfunkel*, 1 AD3d 48).

CRANE, J.P., KRAUSMAN, GOLDSTEIN and SPOLZINO, 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