

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

D13425
W/cb

_____AD3d_____

Argued - December 5, 2006

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
ROBERT J. LUNN
DANIEL D. ANGIOLILLO, JJ.

2006-07513

DECISION & ORDER

Barbara Sclafani, appellant, v Washington Mutual,
et al., respondents.

(Index No. 50989/02)

Tomei & Associates, P.C., Staten Island, N.Y. (Eugene A. Tomei and Louis A. Badolato of counsel), for appellant.

Cullen and Dykman, LLP, Brooklyn, N.Y. (Wendy Tobias of counsel), for respondent Washington Mutual.

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Steven B. Prystowsky of counsel), for respondent Trugreen Landcare, LLC.

Gorton & Gorton, LLP, Garden City, N.Y. (Thomas P. Gorton and John T. Gorton of counsel), for respondent Ferrandino & Son, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated June 20, 2006, which granted the defendants' respective motions for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with one bill of costs.

Contrary to the plaintiff's contention, under the circumstances of this case, the defendants demonstrated "good cause" for the delay in filing their motions for summary judgment,

January 16, 2007

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since the note of issue was filed while there was significant discovery outstanding (*see* CPLR 3212 [a]; *Brill v City of New York*, 2 NY3d 648, 652; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124, 129; *Olivier v Rodney*, 27 AD3d 631, 632; *Herrera v Felice Realty Corp.*, 22 AD3d 723, 724).

Moreover, the defendants each established their prima facie entitlement to summary judgment dismissing the complaint insofar as asserted against them by presenting evidence that the concrete parking barrier over which the plaintiff tripped and fell was open and obvious, as it was readily observable by those employing the reasonable use of their senses and, as a matter of law, was not inherently dangerous (*see Zimkind v Costco Wholesale Corp.*, 12 AD3d 593, 594; *Bryant v Superior Computer Outlet*, 5 AD3d 343, 344; *Cupo v Karfunkel*, 1 AD3d 48). In opposition, the plaintiff failed to raise a triable issue of fact (*see Bryant v Superior Computer Outlet, supra; cf. Cupo v Karfunkel, supra* at 52).

SPOLZINO, J.P., RITTER, LUNN and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court