

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

D14179
C/gts

_____AD3d_____

Argued - February 1, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-01407

DECISION & ORDER

Thaddeus Carthans, respondent, v
Grenadier Realty Corp., et al., appellants.

(Index No. 1113/04)

Brody, Benard & Branch, LLP, New York, N.Y. (Tanya M. Branch of counsel), for appellants.

Jacoby & Meyers, LLP, Newburgh, N.Y. (James W. Shuttleworth III and Linda Armatti Epstein of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (F. Rivera, J.), dated January 13, 2006, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries he allegedly sustained when, on February 21, 2003, at approximately 7:45 A.M., he slipped and fell on ice on a makeshift path located between the curb to a parking lot and a concrete walkway. The defendants, who manage and own the premises, respectively, sought summary judgment dismissing the complaint, arguing that they owed no duty to clear snow and ice from an unpaved area which was not intended to be a public walkway.

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The defendants did not demonstrate their prima facie entitlement to summary judgment because they failed to establish that the adjacent concrete walkway was passable at the time of the plaintiff's accident (*see Malley v Alice Hyde Hosp. Assn.*, 297 AD2d 425, 425; *cf. Rosenbloom v City of New York*, 254 AD2d 474, 475). Moreover, the defendants failed to present evidence from an individual with personal knowledge of the defendants' routine snow removal procedures at the time of the occurrence (*see generally Zuckerman v City of New York*, 49 NY2d 557). Since the defendants did not meet their burden, there is no need to address the sufficiency of the plaintiff's submissions in opposition to the defendants' motion (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment.

SANTUCCI, J.P., GOLDSTEIN, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court