

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

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Submitted - February 20, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
MARK C. DILLON, JJ.

2005-10574

DECISION & ORDER

Hattie Duckworth, appellant, v Village of Monroe,
defendant, Gerard Laurer, et al., respondents.

(Index No. 2322/03)

Dupee & Monroe, P.C., Goshen, N.Y. (Gary R. Somerville of counsel), for appellant.

MacCartney, MacCartney, Kerrigan & MacCartney, Nyack, N.Y. (John D. MacCartney of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Orange County (McGuirk, J.), dated September 29, 2005, which granted the motion of the defendants Gerard Laurer and Beverly Laurer for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

The plaintiff was injured when she stepped on a raised piece of sidewalk in front of property owned by the defendants Gerard Laurer and Beverly Laurer (hereinafter the Laurers), lost her balance, and fell. After the plaintiff commenced the present action, the Laurers moved for summary judgment dismissing the complaint insofar as asserted against them.

The Supreme Court properly granted the motion. After the Laurers established, prima facie, that they did not create the defect which caused the plaintiff's accident, the plaintiff failed to raise a triable issue of fact (*see* CPLR 3212[b]). In opposition to the motion, the plaintiff relied primarily upon the deposition testimony of the defendant Beverly Laurer, in which she acknowledged

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that, years earlier, she and her husband had caused certain repairs to be made to the sidewalk in front of their property. However, by referring to an exhibit on which the plaintiff had previously denoted the area where she fell, Ms. Laurer established that the repair work had been performed on a different part of the sidewalk.

It was incumbent upon the plaintiff to establish that the defective condition in the sidewalk was created by the abutting landowner, and an abutting landowner will not be held responsible for the condition which caused the accident merely because repairs to other, unrelated areas of the walk were undertaken (*see Roark v Hunting*, 24 NY2d 470, 477; *Yass v Deepdale Gardens*, 187 AD2d 506).

MILLER, J.P., SPOLZINO, RITTER and DILLON, 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