

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

D14524  
G/cb

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Submitted - March 1, 2007

A. GAIL PRUDENTI, P.J.  
STEVEN W. FISHER  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2006-05260

DECISION & ORDER

Nicholas Bottiglieri, etc., respondent, v Jeffrey  
Wheeler, et al., appellants.

(Index No. 13741/03)

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Zachary & Zachary, P.C., Staten Island, N.Y. (Deborah C. Zachary of counsel), for  
appellants.

Bosco, Bisignano & Mascolo, Staten Island, N.Y. (James A. Maleady of counsel), for  
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an  
order of the Supreme Court, Richmond County (Maltese, J.), dated April 24, 2006, which denied  
their motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for  
summary judgment dismissing the complaint is granted.

The defendants established their prima facie entitlement to judgment as a matter of law  
by demonstrating that the plaintiff was unable to identify the cause of his fall (*see Rodriguez v Cafaro*,  
17 AD3d 658; *Arbusto v Amerada Hess Corp.*, 16 AD3d 527, 528; *Dapp v Larson*, 240 AD2d 918,  
918-919). In opposition, the plaintiff failed to raise a triable issue of fact. The affidavit of the  
plaintiff's expert submitted in opposition to the motion was based on speculation and was therefore  
insufficient to raise a triable issue of fact (*see Tower Ins. Co. v Allstate Ins. Co.*, 31 AD3d 630, 631).  
Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment  
dismissing the complaint.

March 27, 2007

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In light of our determination, we need not reach the defendants' remaining contentions.

PRUDENTI, P.J., FISHER, CARNI and McCARTHY, 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