

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

D14758  
W/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 12, 2007

ROBERT A. SPOLZINO, J.P.  
GLORIA GOLDSTEIN  
STEVEN W. FISHER  
WILLIAM E. McCARTHY, JJ.

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2006-07610

DECISION & ORDER

George Triantafillopoulos, respondent, v Sala Corporation, d/b/a WIK, appellant.

(Index No. 5274/03)

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White Fleischner & Fino, LLP, New York, N.Y. (Sheri E. Holland of counsel), for appellant.

Klein & Karagiannakis, Staten Island, N.Y. (Alex D. Klein and Steve A. Karagiannakis of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Queens County (Satterfield, J.), entered July 25, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant failed to establish its entitlement to judgment as a matter of law (*see Baillargeon v Kings Waterproofing Corp.*, 29 AD3d 838; *Cupo v Karfunkel*, 1 AD3d 48, 51). The defendant's claim that its motion for summary judgment dismissing the complaint should have been granted on the basis of its affirmative defense of assumption of the risk is not properly before us, as it was raised for the first time on appeal. Moreover, the issue does not involve a pure question of law "which appeared on the face of the record and which could not have been avoided by [the respondent] if brought to [its] attention at the proper juncture" (*Block v Magee*, 146 AD2d 730, 732;

April 17, 2007

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*see Kremerov v Forest View Nursing Home, Inc.*, 24 AD3d 618, 620; *Rashford v City of Utica*, 23 AD3d 1000, 1001; *Prosser v County of Erie*, 244 AD2d 942, 943).

SPOLZINO, J.P., GOLDSTEIN, FISHER and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court