

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

D14792
C/gts

_____AD3d_____

Argued - March 16, 2007

ROBERT W. SCHMIDT, J.P.
WILLIAM F. MASTRO
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2006-02546

DECISION & ORDER

Robert Porazzo, et al., appellants, v
City of New York, et al., respondents.

(Index No. 43044/03)

Budin, Reisman, Kupferberg & Bernstein, LLP (Scott B. Schwartz, New York, N.Y.
of counsel), for appellants.

Jeffrey Samel, New York, N.Y. (David Samel of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated January 18, 2006, as granted that branch of the defendants' motion which was for summary judgment dismissing the cause of action based on an alleged violation of Labor Law § 241(6).

ORDERED that the order is affirmed insofar as appealed from, with costs.

In response to the defendants' prima facie demonstration of their entitlement to judgment as a matter of law, the plaintiffs failed to submit evidence sufficient to raise a triable issue of fact. Contrary to the plaintiffs' contention, the open, ground level of the work site where the injured plaintiff fell did not constitute a passageway, walkway, or other elevated working surface contemplated by 22 NYCRR 23-1.7(d) (*see Roberts v Worth Constr., Inc.*, 21 AD3d 1074, 1077; *Morra v White*, 276 AD2d 536; *Lawyer v Hoffman*, 275 AD2d 541, 542; *Constantino v Kreisler Borg Florman Gen. Constr. Co.*, 272 AD2d 361).

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The appellants' remaining contention is without merit.

SCHMIDT, J.P., MASTRO, CARNI and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court