

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

D14927
C/hu

_____AD3d_____

Argued - March 23, 2007

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2006-03233

DECISION & ORDER

Charles Shlomian, appellant, v 151 West
Associates, LLC, et al., respondents.

(Index No. 20491/04)

Alatsas & Taub, P.C. (Ephrem Wertenteil, New York, N.Y., of counsel), for
appellant.

Greater New York Mutual Insurance Company, New York, N.Y. (Thomas D.
Hughes and Richard C. Rubinstein of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Queens County (Kelly, J.), dated March 8, 2006, which granted the
defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff was injured when, as he attempted to push a hand truck loaded with
fabric through a freight door in a commercial building owned and managed by the defendants, his
hand got caught between the rail of the hand truck and the "panic bar" affixed to the door. The
plaintiff commenced this action against the owner and management company of the building, alleging
negligence in maintaining the panic bar. The Supreme Court granted the defendants' motion for
summary judgment dismissing the complaint, and we affirm.

May 1, 2007

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The defendants made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that they did not create, or have actual or constructive notice of, the condition which the plaintiff alleges caused his injury (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837; *O'Connor v Circuit City Stores, Inc.*, 14 AD3d 676). In response, the plaintiff failed to raise a triable issue of fact. The Supreme Court properly rejected the expert's reports as speculative and conclusory (*see Romano v Stanley*, 90 NY2d 444; *Amatulli v Delhi Constr. Corp.*, 77 NY2d 525, 533 n 2; *Reyes v City of New York*, 29 AD3d 667). The plaintiff offered no evidence to refute the superintendent's deposition testimony that the protective end cap of the panic bar was in place when he inspected the door the day of, but before, the plaintiff's accident. Accordingly, the defendants' motion was properly granted.

SCHMIDT, J.P., SANTUCCI, FLORIO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court