

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

D15116
Y/gts

_____AD3d_____

Argued - March 26, 2007

ROBERT A. SPOLZINO, J.P.
GABRIEL M. KRAUSMAN
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2005-11374

DECISION & ORDER

Daniel Caracciolo, appellant, v Allstate Insurance
Company, et al., respondents., et al., defendants.

(Index No. 5713/04)

Riconda & Garnett, LLP, Valley Stream, N.Y. (Joseph Dugan of counsel), for
appellant.

Ryan, Perrone & Hartlein, Mineola, N.Y. (William T. Ryan of counsel), for
respondents Allstate Insurance Company, The Rosenberg Agency, Inc., and Bradan,
Inc.

Milber Makris Plousadis & Seiden, LLP, Woodbury, N.Y. (Michael Mascola and
Lorin A. Donnelly of counsel), for respondents Davidoff Beauty Salon and Yura
Davidoff.

In an action to recover damages for personal injuries, the plaintiff appeals from so
much of an order of the Supreme Court, Nassau County (Winslow, J.), dated September 30, 2005,
as granted those branches of the respective motions of the defendants Allstate Insurance Company,
The Rosenberg Agency, Inc., and Bradan, Inc., and the defendants Davidoff Beauty Salon and Yura
Davidoff, which were for summary judgment dismissing the complaint insofar as asserted against
them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs
to the respondents appearing separately and filing separate briefs.

May 15, 2007

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CARACCIOLO v ALLSTATE INSURANCE COMPANY

The plaintiff allegedly was injured when he slipped and fell on ice that had formed on the public sidewalk in front of the premises of the defendants Allstate Insurance Company, The Rosenberg Agency, Inc., and Bradan, Inc. Their independent snow removal contractor had removed the snow from the sidewalk and had piled it adjacent to the sidewalk. The snow then melted, ran across the sidewalk, and refroze. The adjacent premises were leased by the defendants Davidoff Beauty Salon and Yura Davidoff. In support of their motions, inter alia, for summary judgment dismissing the complaint insofar as asserted against them, the moving defendants established their entitlement to judgment as a matter of law by demonstrating that they had no duty to pedestrians such as the plaintiff to remove snow from the public sidewalk, since the applicable provision of the local code did not impose tort liability (*see Klotz v City of New York*, 9 AD3d 392, 393; *Rao v Hatanian*, 2 AD3d 616, 617; *Negron v G.R.A. Realty, Inc.*, 307 AD2d 282). In the absence of such a duty, the moving defendants were not liable for the creation of any dangerous condition by the independent contractor who removed the snow (*cf. Olivieri v GM Realty Co., LLC*, __ AD3d __ [2d Dept, Feb. 13, 2007]). In opposition, the plaintiff failed to raise a triable issue of fact .

SPOLZINO, J.P., KRAUSMAN, SKELOS and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court