

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

D15259
G/cb

_____AD3d_____

Argued - April 17, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-01395

DECISION & ORDER

Joel Kravatz, et al., respondents, v County of Suffolk,
appellant.

(Index No. 14352/04)

Christine Malafi, County Attorney, Hauppauge, N.Y. (Kelly Green of counsel), for
appellant.

Bauman, Kunkis & Ocasio-Douglas, P.C. (Kathleen M. Geiger, Long Beach, N.Y.,
of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals, as
limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Burke, J.),
entered January 18, 2006, as, in effect, denied its motion for summary judgment dismissing the
complaint.

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

The defendant established its prima facie entitlement to judgment as a matter of law
by submitting evidence that it did not receive prior written notice of the defect in the roadway that
allegedly caused the injured plaintiff's fall (*see Lopez v G&J Rudolph, Inc.*, 20 AD3d 511, 512). In
opposition, the plaintiffs failed to raise a triable issue of fact as to whether the defendant created the
alleged defect through an affirmative act of negligence (*see Daniels v City of New York*, 29 AD3d

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514, 515; *Bielecki v City of New York*, 14 AD3d 301). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

MILLER, J.P., RITTER, COVELLO and BALKIN, 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