

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

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_____AD3d_____

Argued - April 24, 2007

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
PETER B. SKELOS
WILLIAM E. McCARTHY, JJ.

2006-08415

DECISION & ORDER

Joseph Marinelli, appellant, v Regal
Cinemas, respondent.

(Index No. 13771/04)

Palmeri & Gaven, New York, N.Y. (John J. Palmeri and Lawrence A. Doris of counsel), for appellant.

Robin, Harris, King, Yuhas, Fodera & Richman, New York, N.Y. (Deborah F. Peters and William J. Cariello III, of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Richmond County (Minardo, J.), dated June 22, 2006, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained personal injuries at a movie theater owned by the defendant, when he tripped on a piece of carpet that was raised two to four inches off the tile floor. The Supreme Court granted the defendant's motion for summary judgment dismissing the complaint.

The defendant established its prima facie entitlement to summary judgment by showing, as a matter of law, that it did not create or have actual or constructive notice of the allegedly dangerous condition that caused the accident (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837; *Chemont v Pathmark Supermarkets*, 279 AD2d 545). In opposition, the plaintiff failed to raise a triable issue of fact. As the Supreme Court correctly determined, the

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plaintiff offered no evidence concerning how long the alleged hazard existed prior to the accident (*see Lipsky v Firebaugh Realty Corp.*, 26 AD2d 313, 314; *Kerson v Waldbaums Supermarket*, 284 AD2d 376, 377).

The plaintiff's remaining contentions are without merit.

SPOLZINO, J.P., FLORIO, SKELOS and McCARTHY, 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