

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

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Argued - May 3, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-05229

DECISION & ORDER

Jessica Bonney, etc., et al., appellants,
v City of New York, respondent.

(Index No. 12018/00)

Raymond Schwartzberg & Associates, PLLC, New York, N.Y. (Steven I. Brizel and Raymond Schwartzberg of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and Scott Shorr of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (Mega, J.), dated April 3, 2006, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff Jessica Bonney was injured when she slipped and fell on a patch of ice in the street while walking to the bus stop. Her mother commenced this action against the City of New York, individually and on behalf of Jessica. The City moved for summary judgment dismissing the complaint. The Supreme Court granted the motion, finding that the City established that it did not have actual or constructive notice of the icy condition upon which Jessica fell, and that the plaintiffs' contention that Jessica fell on ice that was a longstanding condition rather than ice which had formed overnight was purely speculative in nature and insufficient to rebut the City's showing. We agree.

June 5, 2007

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The City established its entitlement to summary judgment by submitting meteorological data showing that, although there was a snowstorm four days before Jessica's accident, temperatures rose above freezing in the two days prior to the accident, and there was no further significant precipitation during that time. In view of this documented intervening thaw, the plaintiffs' contention that the ice Jessica slipped on was longstanding was based on sheer speculation and was insufficient to raise a triable issue of fact (*see Simmons v Metropolitan Life Ins. Co.*, 84 NY2d 972; *Katz v Pathmark Stores, Inc.*, 19 AD3d 371; *Clapp v City of New York*, 302 AD2d 347, 348; *Davis v City of New York*, 255 AD2d 356, 357-358).

SPOLZINO, J.P., SKELOS, DILLON 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