

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

D15863
Y/gts

_____AD3d_____

Submitted - June 5, 2007

HOWARD MILLER, J.P.
WILLIAM F. MASTRO
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-04287

DECISION & ORDER

Roland Otey, appellant, v City of New York,
et al., respondents, et al., defendant.

(Index No. 1847/03)

Jacoby & Meyers (Finkelstein & Partners, Newburgh, N.Y. [James W. Shuttleworth III] of counsel), for appellant.

Hardin, Kundla, McKeon & Poletto, P.A., New York, N.Y. (James A. Cardenas of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated February 8, 2006, which granted the motion of the defendants City of New York and Black Veterans for Social Justice, Inc., for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly slipped and fell on water on top of a step adjacent to the bathroom of a shelter which was owned by the defendant City of New York and operated by the defendant Black Veterans for Social Justice, Inc. (hereinafter collectively the defendants). The defendants established their entitlement to judgment as a matter of law by submitting evidence sufficient to demonstrate that they neither created nor had actual or constructive notice of the alleged hazardous condition (*see Nu Li Lin v New York City Hous. Auth.*, 36 AD3d 776; *Perlongo v Park City 3 & 4 Apts., Inc.*, 31 AD3d 409). In opposition, the plaintiff failed to raise a triable issue of fact (*see Connelly v Shop Rite Supermarkets, Inc.*, 38 AD3d 588; *Anderson v Central Val. Realty Co.*,

July 24, 2007

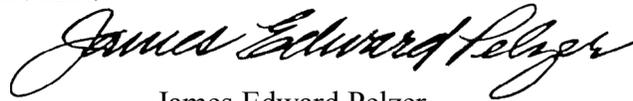
Page 1.

OTey v CITY OF NEW YORK

300 AD2d 422; *cf. Lowe v Spada*, 282 AD2d 815). The plaintiff's contention that the summary judgment motion should have been denied as premature is without merit (*see Min Whan Ock v City of New York*, 34 AD3d 542; *Price v County of Suffolk*, 303 AD2d 571).

MILLER, J.P., MASTRO, LIFSON and CARNI, 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