

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

D16438
X/cb

_____AD3d_____

Argued - September 18, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
THOMAS A. DICKERSON, JJ.

2006-05467

DECISION & ORDER

Barbara Peterson Goldston, etc., et al., respondents-
appellants, v T.J. Maxx, Inc., appellant-respondent.

(Index No. 010575/03)

McAndrew, Conboy & Prisco, LLP, Woodbury, N.Y. (Mary C. Azzaretto of
counsel), for appellant-respondent.

Nathan L. Dembin & Associates, P.C. (Pollack, Pollack, Isaac & De Cicco, New
York, N.Y. [Brian J. Isaac and Kenneth J. Gorman] of counsel), for respondents-
appellants.

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, Richmond County (Gigante, J.),
dated May 3, 2006, as denied its motion for summary judgment dismissing the complaint, and the
plaintiffs cross-appeal from so much of the same order as denied their cross motion to impose
sanctions for the alleged spoliation of evidence.

ORDERED that the order is affirmed, without costs or disbursements.

The defendant failed to establish its entitlement to judgment as a matter of law on the
issue of whether it lacked actual or constructive notice of the allegedly dangerous conditions which
caused the infant plaintiff's fall (*see DeFalco v BJ's Wholesale Club, Inc.*, 38 AD3d 824; *Yioves v*
T. J. Maxx, Inc., 29 AD3d 572). Accordingly, the defendant's motion for summary judgment was
properly denied.

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The plaintiffs' cross motion to impose sanctions for the alleged spoliation of evidence also was properly denied (*see Denoyelles v Gallagher*, 40 AD3d 1027).

MILLER, J.P., RITTER, GOLDSTEIN and DICKERSON, 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