

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

D17382
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Submitted - November 14, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2007-02707

DECISION & ORDER

Shirley Hudlin, respondent, v Epicurean Deli,
appellant.

(Index No. 30045/05)

Faust Goetz Schenker & Blee, LLP, New York, N.Y. (Lisa L. Gokhulsingh of counsel), for appellant.

Posner & Posner, New York, N.Y. (Amy Lipp and Joseph Medic of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Harkavy, J.), dated January 31, 2007, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

“A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it” (*Ulu v ITT Sheraton Corp.*, 27 AD3d 554, 554, quoting *Curtis v Dayton Beach Park No. 1 Corp.*, 23 AD3d 511, 512; see *Roethgen v AMF Babylon Lanes*, 30 AD3d 398; *Yioves v T.J. Maxx, Inc.*, 29 AD3d 572). Here, the defendant failed to demonstrate that it neither created the allegedly dangerous

condition nor had actual or constructive notice of it. Therefore, the Supreme Court did not err in denying the defendant's motion for summary judgment dismissing the complaint.

SPOLZINO, J.P., SKELOS, LIFSON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court