

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

D17492  
X/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 3, 2007

STEPHEN G. CRANE, J.P.  
REINALDO E. RIVERA  
ANITA R. FLORIO  
RUTH C. BALKIN, JJ.

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2006-11418

DECISION & ORDER

Nicholas Chahales, et al., appellants, v  
Westchester Joint Water Works, et al.,  
respondents, et al., defendant.

(Index No. 9809/04)

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Biaggi & Biaggi, New York, N.Y. (Mario Biaggi, Jr., of counsel), for appellants.

Thomas K. Moore, White Plains, N.Y. (Neil J. Toomey and Brian Powers of  
counsel), for respondent Westchester Joint Water Works.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz  
and Thomas G. Gardiner of counsel), for respondent Westchester County.

Frank J. Rubino, Corporation Counsel, Yonkers, N.Y. (Michael Levinson of counsel),  
for respondent City of Yonkers.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from  
an order of the Supreme Court, Westchester County (LaCava, J.), entered October 16, 2006, which  
granted the separate motions of the defendants Westchester Joint Water Works, Westchester County,  
and City of Yonkers for summary judgment dismissing the complaint insofar as asserted against each  
of them.

ORDERED that the order is affirmed, with one bill of costs.

"It is axiomatic that 'before a defendant may be held liable for negligence it must be  
shown that the defendant owes a duty to the plaintiff . . . In the absence of duty, there is no breach

January 8, 2008

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and without a breach there is no liability” (*Dugue v 1818 Newkirk Mgt. Corp.*, 301 AD2d 561, 562, quoting *Pulka v Edelman*, 40 NY2d 781, 782). "The law imposes a duty to maintain property free and clear of dangerous or defective conditions only upon those who own, occupy, or control property, or who put the property to a special use or derive a special benefit from it" (*Guzov v Manor Lodge Holding Corp.*, 13 AD3d 482, 483; see *Vikhor v City of New York*, 43 AD3d 914, 916; *Gasis v City of New York*, 35 AD3d 533, 534; *Simo v New York City Tr. Auth.*, 13 AD3d 609, 611; *Dugue v 1818 Newkirk Mgt. Corp.*, 301 AD2d at 562; *Minott v City of New York*, 230 AD2d 719, 720).

In support of their motions for summary judgment, the defendants Westchester Joint Water Works, Westchester County, and City of Yonkers (hereinafter the movants) established their prima facie entitlement to summary judgment. In opposition, the plaintiffs failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the motions for summary judgment dismissing the complaint insofar as asserted against the movants (see *Guzov v Manor Lodge Holding Corp.*, 13 AD3d at 483; *Dugue v 1818 Newkirk Mgt. Corp.*, 301 AD2d at 562; *Minott v City of New York*, 230 AD2d at 720).

The plaintiffs’ remaining contentions are without merit.

CRANE, J.P., RIVERA, FLORIO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court