

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

D17864  
Y/kmg

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Argued - December 17, 2007

ROBERT A. SPOLZINO, J.P.  
PETER B. SKELOS  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO, JJ.

2006-11458

DECISION & ORDER

Breindy Polatsek, et al., respondents, v  
Congregation Bais Arye, et al., appellants,  
et al., defendant.

(Index No. 7489/04)

McCabe & Mack, LLP, Poughkeepsie, N.Y. (Christina M. Bookless of counsel), for appellants.

Cohen & Jaffe, LLP, Garden City, N.Y. (Lisa M. Comeau of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants Congregation Bais Arye, Leonard Freund, Sylvia Freund, Abraham Freund, Edith Freund, and Jacob Gluck appeal from an amended order of the Supreme Court, Orange County (Alessandro, J.), dated August 2, 2006, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the amended order is affirmed, with costs.

On a rainy day, the injured plaintiff allegedly slipped and fell on water on the foyer floor of premises owned by the defendants Congregation Bais Arye, Leonard Freund, Sylvia Freund, Abraham Freund, Edith Freund, and Jacob Gluck (hereinafter the defendants). Contrary to the defendants' contention, they failed to submit evidence sufficient to establish, prima facie, their status as out-of-possession landlords who had no duty to maintain the foyer (*see generally Massucci v Amoco Oil*, 292 AD2d 351; *Stalter v Prudential Ins. Co. of Am.*, 220 AD2d 577). Since the

February 5, 2008

Page 1.

POLATSEK v CONGREGATION BAIS ARYE

defendants did not address the issue of whether they created or had actual or constructive notice of the alleged defect, they failed to meet their prima facie burden and, accordingly, we need not review the sufficiency of the plaintiffs' opposition papers (*see Kolosovskiy v Vitale*, 7 AD3d 579).

SPOLZINO, J.P., SKELOS, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court