

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

D18464  
O/prt

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Submitted - February 13, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
HOWARD MILLER  
EDWARD D. CARNI  
RANDALL T. ENG, JJ.

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2007-03965

DECISION & ORDER

Roberta Heiden, respondent,  
v City of New York, et al., appellants.

(Index No. 23978/05)

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Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo, Michael Shender, and Karen M. Griffin of counsel), for appellants.

Greifer & Tunick, LLP, New York, N.Y. (Richard D. Tunick of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Hinds-Radix, J.), dated February 27, 2007, as denied that branch of their motion which was to dismiss the complaint for failure to comply with CPLR 304 or, alternatively, for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the defendants' motion which was for summary judgment dismissing the complaint is granted.

The defendants made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the table wheel upon which the plaintiff tripped and fell was open and obvious, and not inherently dangerous (*see Mastellone v City of New York*, 29 AD3d 540; *Swan v Eastman Kodak Co.*, 16 AD3d 1098, 1099; *Hecht v 281 Scarsdale Corp.*, 3 AD3d 551, 552; *Cupo v Karfunkel*, 1 AD3d 48; *Sorce v Great Oak Marina*, 282 AD2d 598, 599). In response, the plaintiff

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failed to raise a triable issue of fact sufficient to defeat the motion for summary judgment (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). Thus, the Supreme Court erred in denying that branch of the defendants' motion which was for summary judgment.

In light of our determination, we need not reach the parties' remaining contentions.

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, JJ., concur.

ENTER:

  
James Edward Felner  
Clerk of the Court