

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

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_____AD3d_____

Submitted - May 23, 2008

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-03638

DECISION & ORDER

Marie Blaise, appellant, v New Beach Farm Corp.,
et al., respondents.

(Index No. 14938/05)

Becker & D'Agostino, P.C., New York, N.Y. (Michael D'Agostino of counsel), for appellant.

Torino & Bernstein, P.C., Mineola, N.Y. (Vincent J. Battista of counsel), for respondent New Beach Farm Corp.

Gannon, Rosenfarb & Moskowitz, New York, N.Y. (John H. Shin and Peter J. Gannon of counsel), for respondents Sam Sup Yup and Hyeda Yang.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Knipel, J.), dated March 5, 2007, which granted that branch of the motion of the defendants Sam Sup Yup and Hyeda Yang which was for summary judgment dismissing the complaint insofar as asserted against them and that branch of the cross motion of the defendant New Beach Farm Corp. which was for the same relief.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the defendants appearing separately and filing separate briefs.

The plaintiff slipped and fell in a retail fruit and vegetable store operated by the defendant New Beach Farm Corp. on property owned by the defendants Sam Sup Yup and Hyeda Yang. Following the accident, the plaintiff observed "a green thing" under her shoe, which she believed was a "piece of part of one of the vegetables."

June 17, 2008

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The defendants established their prima facie entitlement to judgment as a matter of law by submitting evidence that they neither created the allegedly dangerous condition at issue nor had actual or constructive notice of it (*see Pisano v Young Women's Christian Assn. of Brooklyn*, 43 AD3d 814). In opposition, the plaintiff failed to raise a triable issue of fact (*see CPLR 3212[b]*). Accordingly, the Supreme Court properly granted that branch of the motion of the defendants Sam Sup Yup and Hyeda Yang which was for summary judgment dismissing the complaint insofar as asserted against them and that branch of the cross motion of the defendant New Beach Farm Corp. which was for the same relief.

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, 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