

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

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_____AD3d_____

Submitted - November 13, 2008

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2008-06396

DECISION & ORDER

Lisa Ann Smith, respondent, v Village of
Rockville Centre, appellant, et al., defendant.

(Index No. 9326/06)

Zaklukiewicz, Puzo & Morrissey, LLP, Islip Terrace, N.Y. (Candace M. Bartone of
counsel), for appellant.

Matthew A. Sosnik (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D.
Sweetbaum], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Village of
Rockville Centre appeals from an order of the Supreme Court, Nassau County (Winslow, J.), dated
June 24, 2008, which denied its motion for summary judgment dismissing the complaint insofar as
asserted against it.

ORDERED that the order is reversed, on the law, with costs, and the appellant's
motion for summary judgment dismissing the complaint insofar as asserted against it is granted.

The plaintiff allegedly sustained injuries when she tripped and fell on a public sidewalk
within the defendant Village of Rockville Centre (hereinafter the Village). Specifically, she tripped
over "uneven bricks." Those bricks had been installed by a contractor the Village hired.

On its motion for summary judgment dismissing the complaint insofar as asserted
against it, the Village made a prima facie showing of entitlement to judgment as a matter of law by
providing evidence demonstrating that it lacked prior written notice of the allegedly dangerous

December 9, 2008

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condition in the sidewalk, as required by the Code of Incorporated Village of Rockville Centre § 341-a (see *Jacobs v Village of Rockville Ctr.*, 41 AD3d 539, 540). Contrary to the Supreme Court's determination, in opposition, the plaintiff failed to raise a triable issue of fact. While the plaintiff attempted to raise a triable issue of fact as to the applicability of the so-called "affirmative negligence exception" to the statutory rule requiring prior written notice, she failed to provide any evidence tending to show that work by the Village's contractor "*immediately* result[ed] in the existence of" the uneven brick "condition" (*Oboler v City of New York*, 8 NY3d 888, 889 [emphasis in original]; see *Yarborough v City of New York*, 10 NY3d 726, 728). Accordingly, the Village's motion for summary judgment dismissing the complaint insofar as asserted against it should have been granted (see *Jacobs v Village of Rockville Ctr.*, 41 AD3d at 540).

RIVERA, J.P., DILLON, COVELLO and McCARTHY, 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