

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

D21525
W/kmg

_____AD3d_____

Argued - November 25, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2008-03752

DECISION & ORDER

Matilde De Garcia, respondent, v Empire Fasteners,
Inc., appellant, et al., defendant.

(Index No. 8920/06)

Tromello, McDonnell & Kehoe, Melville, N.Y. (James S. Kehoe of counsel), for
appellant.

William Pager, Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant Empire Fasteners, Inc., appeals from an order of the Supreme Court, Queens County (Kitzes, J.), entered March 28, 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 motion of the defendant Empire Fasteners, Inc., for summary judgment dismissing the complaint insofar as asserted against it is granted.

In support of its motion for summary judgment dismissing the complaint insofar as asserted against it, the defendant Empire Fasteners, Inc. (hereinafter Empire), submitted photographs establishing that its property did not abut the portion of the sidewalk which contained the alleged defect that the plaintiff identified at her deposition as the location of her fall. Empire thus established that it did not have a duty to maintain the portion of the sidewalk where the plaintiff fell in a reasonably safe condition, and that it was therefore entitled to summary judgment dismissing the complaint insofar as asserted against it (*see* Administrative Code of City of NY § 7-210; *Vikhor v*

December 16, 2008

Page 1.

De GARCIA v EMPIRE FASTENERS, INC.

City of New York, 43 AD3d 914). The plaintiff failed to raise a triable issue of fact in opposition to Empire's showing (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Accordingly, the Supreme Court should have granted Empire's motion for summary judgment dismissing the complaint insofar as asserted against it.

FISHER, J.P., FLORIO, CARNI 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