

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

D21596  
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Argued - November 25, 2008

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

2008-02260

DECISION & ORDER

Catherine Crafa, et al., respondents, v  
Marshalls of MA, Inc., et al., appellants.

(Index No. 1709/06)

McAndrew, Conboy & Prisco, LLP, Woodbury, N.Y. (Mary C. Azzaretto of counsel), for appellants.

Seidner, Rosenfeld & Guttentag, LLP, Babylon, N.Y. (Jeffrey Guttentag of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Suffolk County (R. Doyle, J.), entered January 30, 2008, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On their motion for summary judgment dismissing the complaint, the defendants failed to offer evidence sufficient to show that the condition complained of by the plaintiffs was both open and obvious and, as a matter of law, not inherently dangerous (*see Cupo v Karfunkel*, 1 AD3d 48, 52). Nor did the defendants meet their prima facie burden of demonstrating their lack of constructive notice regarding the allegedly hazardous condition that caused the injured plaintiff to fall (*see Roussos v Ciccotto*, 15 AD3d 641, 642-643). Accordingly, the Supreme Court properly denied the

December 30, 2008

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defendants' motion for summary judgment dismissing the complaint. In light of the foregoing, it is not necessary to consider the sufficiency of the plaintiffs' opposition papers.

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