

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

D22071
W/kmg

_____AD3d_____

Argued - January 16, 2009

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2008-02710

DECISION & ORDER

Barbara Martin, respondent, v City of New
York, defendant, Moise Zaytoun, et al., appellants.

(Index No. 1523/05)

Lester Schwab Katz & Dwyer, LLP, (Max W. Gershweir, New York, N.Y. [Jennifer B. Ettenger], of counsel), for appellants.

Apicella & Schlesinger, New York, N.Y. (Alan C. Kestenbaum of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Moise Zaytoun and Jacqueline Zaytoun appeal from an order of the Supreme Court, Kings County (Bunyan, J.), dated January 30, 2008, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

"An owner of property abutting a public sidewalk is under no duty to pedestrians to remove snow and ice that accumulates on the sidewalk unless a statute or ordinance specifically imposes tort liability for failing to do so, or the property owner made the sidewalk more hazardous through negligent snow removal efforts" (*Jablons v Peak Health Club, Inc.*, 19 AD3d 369, 370; *Rao v Hatanian*, 2 AD3d 616). The complaint alleged that the appellants' negligent snow removal efforts precipitated the plaintiff's fall.

The appellants failed to establish their entitlement to judgment as a matter of law since they did not establish, prima facie, that their snow removal efforts did not cause, create, or exacerbate

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the icy condition that precipitated the plaintiff's accident and consequent injuries (*see Knee v Trump Vil. Constr. Corp.*, 15 AD3d 545). Therefore, the Supreme Court properly denied the appellants' motion for summary judgment regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

FISHER, J.P., FLORIO, DICKERSON and BELEN, 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