

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

D22163
W/prt

_____AD3d_____

Argued - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-10075

DECISION & ORDER

Derlin Sanchez, appellant, v
Barnes & Noble, Inc., respondent,
et al., defendants.

(Index No. 11948/02)

Lawrence A. Wilson (Alexander J. Wulwick, New York, N.Y., of counsel), for appellant.

McAndrew, Conboy & Prisco, Woodbury, N.Y. (Mary C. Azzaretto of counsel), for respondent and defendant B. Dalton Book Sellers, Inc.

Jeffrey Samel, New York, N.Y. (Judah Z. Cohen of counsel), for defendant Amtech Lighting & Electrical Services.

In an action to recover damages for personal injuries, etc., the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (R. Doyle, J.), entered September 24, 2007, as granted that branch of the cross motion of the defendant Barnes & Noble, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable by the plaintiff to the defendant Barnes & Noble, Inc.

The defendant Barnes & Noble, Inc. (hereinafter Barnes & Noble), established its prima facie entitlement to judgment as a matter of law by showing that it neither created nor had actual or constructive notice of the alleged defect which caused the plaintiff's injury (*see Gordon v*

February 24, 2009

Page 1.

SANCHEZ v BARNES & NOBLE, INC.

American Museum of Natural History, 67 NY2d 836, 837). In opposition to that showing, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court did not err in granting that branch of Barnes & Noble's cross motion which was for summary judgment dismissing the complaint insofar as asserted against it (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

MASTRO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, prominent initial "J".

James Edward Pelzer
Clerk of the Court