

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

D22188  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 8, 2009

PETER B. SKELOS, J.P.  
MARK C. DILLON  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG, JJ.

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2007-11192

DECISION & ORDER

Robert Rivera, appellant, v Jani-King  
of New York, Inc., respondent.

(Index No. 5817/05)

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Rodney S. Lapidus, P.C., Bohemia, N.Y., for appellant.

Tromello, McDonnell & Kehoe, Melville, N.Y. (Kevin P. Slattery of counsel), for  
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Suffolk County (R. Doyle, J.), dated November 13, 2007, which granted  
the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, without costs or disbursements, and  
the defendant's motion for summary judgment dismissing the complaint is denied.

The plaintiff allegedly slipped and fell on black ice on the exterior ramp of his  
employer's premises. At the time of the accident, the defendant had a maintenance agreement with  
the plaintiff's employer to clean the premises. The plaintiff commenced this action against the  
defendant, contending that defendant's franchisee created the defect by pouring waste water onto the  
exterior ramp. The defendant moved for summary judgment dismissing the complaint contending,  
inter alia, that the deposition testimony of its franchisee demonstrated that it had not created the icy  
condition on the ramp. The Supreme Court granted the motion. We reverse.

February 24, 2009

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There are issues of fact requiring the denial of summary judgment (*see Healy v ARP Cable*, 299 AD2d 152, 154-155).

SKELOS, J.P., DILLON, ANGIOLILLO and ENG, 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