

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

D22540
O/prt

_____AD3d_____

Argued - February 5, 2009

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
MARK C. DILLON
RANDALL T. ENG, JJ.

2008-04993

DECISION & ORDER

Romana DeLeon, respondent, v
Westhab, Inc., appellant.

(Index No. 7465/06)

Miranda Sokoloff Sambursky Slone Verveniotis, LLP, Elmsford, N.Y. (Nancy R. Schembri and Michael Longo of counsel), for appellant.

Ronemus & Vilensky, LLP, New York, N.Y. (Robin Mary Heaney of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Westchester County (Liebowitz, J.), dated May 6, 2008, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion is granted.

A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of demonstrating that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (*see Sloane v Costco Wholesale Corp.*, 49 AD3d 522; *Frazier v City of New York*, 47 AD3d 757, 758). Here, the defendant met this burden by submitting evidence that the alleged hazardous condition on the subject stairs had not been created by its employees, and that it had neither actual nor constructive notice of it (*see Costello v Zaidman*, 58 AD3d 593; *Cunningham v Bay Shore Middle School*, 55 AD3d 778,

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779). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the defendant's motion for summary judgment should have been granted.

PRUDENTI, P.J., SKELOS, DILLON 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