

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

D23233  
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Argued - April 3, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
ARIEL E. BELEN  
PLUMMER E. LOTT, JJ.

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2007-00882

DECISION & ORDER

Nung Ja Suh, respondent, v New York City Racing  
Association, Inc., appellant, et al., defendant.

(Index No. 26039/04)

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Bee Ready Fishbein Hatter & Donovan, LLP, Mineola, N.Y. (Robert M. Conti and  
Peter Bee of counsel), for appellant.

Hach & Rose LLP, New York, N.Y. (Philip Abate of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant New York City  
Racing Association, Inc., appeals from an order of the Supreme Court, Queens County (Grays, J.),  
entered December 12, 2006, which denied its motion for summary judgment dismissing the complaint  
insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries she  
allegedly sustained when the bench upon which she was seated in the grandstand of the Aqueduct  
Racetrack collapsed. The defendant racetrack owner (hereinafter the defendant) moved for summary  
judgment dismissing the complaint insofar as asserted against it, on the ground, among others, that  
it neither created nor had actual or constructive notice of the alleged defective condition of the bench.

The Supreme Court properly denied the defendant's motion. The defendant failed to

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establish, prima facie, that it did not have actual or constructive notice of the alleged defective condition (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837). Since the defendant failed to meet its initial burden, we need not review the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 852).

In light of our determination, we need not address the defendant's remaining contentions.

SPOLZINO, J.P., SANTUCCI, BELEN and LOTT, 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