

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

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Submitted - May 4, 2009

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2008-02615

DECISION & ORDER

Mollie Starling, et al., appellants, v Suffolk County
Water Authority, respondent, et al., defendant.

(Index No. 17366/03)

Alan Polsky, Bohemia, N.Y., for appellants.

O'Connor, O'Connor, Hintz & Deveney, LLP, Melville, N.Y. (Michael T. Regan of
counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Suffolk County (R. Doyle, J.), entered February 22, 2008, as, upon an order of the same court dated January 10, 2008, granting the motion of the defendant Suffolk County Water Authority, inter alia, for summary judgment dismissing the complaint insofar as asserted against it, is in favor of that defendant and against them, dismissing the complaint insofar as asserted against that defendant.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

The plaintiff Mollie Starling allegedly was injured when she stepped on a water meter cover owned and maintained by the defendant Suffolk County Water Authority (hereinafter SCWA), which was located outside a fence in front of her home.

“To impose liability upon a defendant in a trip-and-fall action, there must be evidence that a dangerous or defective condition existed, and that the defendant either created the condition or had actual or constructive notice of it” (*Denker v Century 21 Dept. Stores, LLC*, 55 AD3d 527,

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528; *see Weber v City of New York*, 24 AD3d 130, 131; *LoCurto v City of New York*, 2 AD3d 277). A defendant moving for summary judgment in a personal injury action has the burden of establishing that it did not create the defective condition or have actual or constructive notice of its existence (*see Noia v Maselli*, 45 AD3d 746, 747; *Franks v G & H Real Estate Holding Corp.*, 16 AD3d 619, 620). Here, SCWA established its prima facie entitlement to judgment as a matter of law by demonstrating that it neither created nor had actual or constructive notice of the unsecured water meter cover. In opposition to the motion, the plaintiffs failed to raise a triable issue of fact (*see generally Applegate v Long Is. Power Auth.*, 53 AD3d 515, 515-516). Accordingly, the Supreme Court properly awarded SCWA summary judgment dismissing the complaint insofar as asserted against it.

The plaintiffs' remaining contentions are without merit.

MASTRO, J.P., DILLON, SANTUCCI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court