

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

D23650
O/kmg

_____AD3d_____

Argued - May 19, 2009

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
HOWARD MILLER
PLUMMER E. LOTT, JJ.

2008-07166

DECISION & ORDER

John Harris, appellant, v APW Supermarkets,
Inc., respondent.

(Index No. 26516/06)

The Cochran Firm, New York, N.Y. (Paul A. Marber of counsel), for appellant.

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP, Mineola, N.Y. (Nicole Licata-McCord 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 (Whelan, J.), dated July 1, 2008, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained personal injuries when his right arm made contact with a shelf extender in an aisle of the defendant's supermarket. At his deposition, the plaintiff stated that the shelf extender was made of a clear plastic, approximately a foot in length, and "as wide as it is long." In addition, he acknowledged that it contained certain grocery items at the time of the occurrence. Photographs appearing in the record on appeal depict a shelf extender screwed into the edge of the shelf and protruding out from it.

The defendant established, *prima facie*, its entitlement to judgment as a matter of law by showing that the shelf extender which allegedly caused the plaintiff's accident was readily observable by the reasonable use of one's senses and was not inherently dangerous (*see Neiderbach*

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v 7-Eleven, Inc., 56 AD3d 632, 633). In opposition, the plaintiff failed to raise a triable issue of fact (*see* CPLR 3212[b]). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

PRUDENTI, P.J., FISHER, MILLER and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court