

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

D23707
Y/prt

_____AD3d_____

Submitted - May 18, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-07208

DECISION & ORDER

Hansi Braudy, respondent, v
Best Buy Co., Inc., appellant.

(Index No. 19383/06)

Simmons, Jannace & Stagg, LLP, Syosset, N.Y. (Sal F. DeLuca of counsel), for appellant.

David S. Klausner, PLLC, White Plains, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Westchester County (Smith, J.), dated July 10, 2008, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured when she fell in the defendant's store. The defendant moved for summary judgment dismissing the complaint. The Supreme Court denied the defendant's motion. We affirm.

"A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing 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" (*Curtis v Dayton Beach Park No. 1 Corp.*, 23 AD3d 511, 512). "To meet its initial burden on the issue of lack of constructive notice, the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell" (*Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598, 598-599). Since the defendant failed to do so here, the Supreme

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Court correctly denied the defendant's motion without regard to the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 852).

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court