

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

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_____AD3d_____

Argued - April 29, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-00713

DECISION & ORDER

Rhoda Stern, appellant, v Costco Wholesale,
respondent.

(Index No. 21484/05)

Verde, Steinberg & Pontell, LLC, New York, N.Y. (Steven Pontell of counsel), for appellant.

Thoms M. Bona, P.C., White Plains, N.Y. (James C. Miller and Michael Flake of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Nastasi, J.), entered December 17, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured when she tripped and fell over a flatbed shopping cart in one of the aisles of the defendant's store. The cart was painted bright orange, was approximately four feet long and two to three feet wide, had a six-inch-high bed with a handle at one end, and was available for use by both customers and employees. On its motion for summary judgment dismissing the complaint, the defendant established that the shopping cart in the aisle was "both open and obvious and . . . not inherently dangerous" (*Cupo v Karfunkel*, 1 AD3d 48, 52; see *Bernth v King Kullen Grocery Co., Inc.*, 36 AD3d 844; *Espinoza v Hemar Supermarket, Inc.*, 43 AD3d 855). In opposition, the plaintiff failed to raise a triable issue of fact (see *Bernth v King Kullen Grocery Co., Inc.*, 36 AD3d 844). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

June 30, 2009

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The plaintiff's remaining contentions are without merit.

FISHER, J.P., COVELLO, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court