

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

D23849  
G/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 14, 2009

WILLIAM F. MASTRO, J.P.  
HOWARD MILLER  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

2008-05306

DECISION & ORDER

Carol Teplin, et al., appellants, v Bonwit Inn,  
et al., respondents (and a third-party action).

(Index No. 16765/06)

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Christopher S. Olson, Huntington, N.Y. (Susan R. Nudelman of counsel), for appellants.

Burns, Russo, Tamigi & Reardon, LLP, Garden City, N.Y. (James O'Hare and John Pieret 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 an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated April 1, 2008, as granted the defendants' motion for summary judgment dismissing the complaint.

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

The plaintiff Carol Teplin allegedly sustained injuries when she tripped and fell at the defendant restaurant Bonwit Inn. In order to prevail in a trip-and-fall case, the "plaintiff must demonstrate that the defendant had actual or constructive notice of the allegedly defective condition that caused the fall, or created that condition" (*Brown v Outback Steakhouse*, 39 AD3d 450, 450; *see Price v EQK Green Acres*, 275 AD2d 737; *Kraemer v K-Mart Corp.*, 226 AD2d 590). Here, the defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that they neither created nor had actual or constructive notice of the allegedly defective condition (*see Starling v Suffolk County Water Auth.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2009 NY Slip Op 04889 [2d

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Dept 2009]). In opposition, the plaintiffs failed to raise a triable issue of fact (*id.*; see *Sanchez v Barnes & Noble, Inc.*, 59 AD3d 699, 699-700; *Gilliam v White Castle*, 8 AD3d 428, 428). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

MASTRO, J.P., MILLER, CHAMBERS and AUSTIN, 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