

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

D23935
C/cb

_____AD3d_____

Submitted - June 11, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
PLUMMER E. LOTT, JJ.

2008-07120

DECISION & ORDER

Damon Knox, appellant, v United Christian Church
of God, Inc., respondent.

(Index No. 24588/06)

Reid B. Wissner, New York, N.Y. (Joseph Monaco of counsel), for appellant.

Raskin & Kremins, New York, N.Y. (Scott S. Eckert of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Hurkin-Torres, J.), dated July 2, 2008, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established its prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324) by demonstrating that the plaintiff was unable to identify the cause of his accident or establish that the accident occurred on the sidewalk abutting the defendant's premises (*see Reiff v Beechwood Browns Rd. Bldg. Corp.*, 54 AD3d 1015; *Kletke v GOS Corp.*, 51 AD3d 875; *Slattery v O'Shea*, 46 AD3d 669; *Golba v City of New York*, 27 AD3d 524; *Koller v Leone*, 299 AD2d 396). In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff's affidavit submitted in opposition to the motion merely raised feigned factual issues designed to avoid the consequences of his deposition testimony (*see Karwowski v New York City Tr. Auth.*, 44 AD3d 826; *Denicola v Costello*, 44 AD3d 990; *Manning v 6638 18th Ave. Realty Corp.*, 28 AD3d

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434; *Tejada v Jonas*, 17 AD3d 448; *Koller v Leone*, 299 AD2d 396).

SPOLZINO, J.P., SANTUCCI, FLORIO and LOTT, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court