

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

D25194
C/kmg

_____AD3d_____

Submitted - November 2, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
HOWARD MILLER
DANIEL D. ANGIOLILLO, JJ.

2008-07365

DECISION & ORDER

Nancy C. Delaney, et al., appellants,
v City of Mount Vernon, et al., respondents.

(Index No. 3815/04)

Law Offices of Paul L. Brozdowski, LLC, Cortlandt Manor, N.Y., for appellants.

Helen M. Blackwood, Corporation Counsel, Mount Vernon, N.Y. (Hina Sherwani of counsel), for respondents.

In an action, inter alia, to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Westchester County (Colabella, J.), entered June 30, 2008, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The municipal defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that there was no special relationship between the parties. "For there to be special relationship-based liability, a municipality's agent must be clearly on notice of palpable danger" (*Kovit v Estate of Hallums*, 4 NY3d 499, 508; see *Sciortino v Leo*, 60 AD3d 1470, 1471). In opposition, the plaintiffs failed to raise a triable issue of fact as to the existence of a special relationship (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Moreover, as the Supreme Court correctly determined, the evidence submitted by the defendants in support of their motion established that they did not have notice of any vicious propensities on the part of the dog that allegedly bit the injured plaintiff. In opposition to this showing, the plaintiffs failed to raise a triable issue of fact (*cf.*

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Browne v Town of Hempstead, 110 AD2d 102, 108). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

The plaintiffs' remaining contentions are without merit.

DILLON, J.P., FLORIO, MILLER and ANGIOLILLO, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court