

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

D25245
H/prt

_____AD3d_____

Argued - October 16, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2008-06774

DECISION & ORDER

Spencer Kagan, et al., appellants, v Town of
North Hempstead, et al., respondents, et al.,
defendant.

(Index No. 6384/05)

Andrew D. Greene, P.C., Lake Success, N.Y., for appellants.

Maroney O'Connor LLP, New York, N.Y. (Thomas J. Maroney of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Nassau County (Brandveen, J.), dated June 2, 2008, which granted the motion of the defendants Town of North Hempstead and Port Washington Parking District for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

On February 4, 2004, at around 9:00 P.M., the injured plaintiff allegedly slipped and fell on ice within a puddle of water at a parking lot owned and maintained by the defendants Town of North Hempstead and Port Washington Parking District (hereinafter the defendants). Heavy rain fell during the previous night, and a mixture of snow and rain fell during the morning hours of February 4, 2004. The parking lot was last plowed on January 28, 2004. At the injured plaintiff's deposition, he asserted that the icy condition within the puddle formed when snow, which had been piled on a nearby median, melted and refroze.

December 1, 2009

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The defendants established their entitlement to judgment as a matter of law by demonstrating that they did not have prior written notice of the alleged icy condition which caused the injured plaintiff to fall (*see* Town of North Hempstead Code § 26-1; *Patti v Town of N. Hempstead*, 23 AD3d 362; *Camenson v Town of N. Hempstead*, 298 AD2d 543). In opposition, the plaintiffs failed to submit evidence sufficient to raise a triable issue of fact. Contrary to the plaintiffs' contention, the logbook entry of the defendant Port Washington Parking District for the date of the accident, which merely stated "salt all walks black ice," did not constitute prior written notice so as to satisfy the statutory requirement (*see Camenson v Town of N. Hempstead*, 298 AD2d 543; *Roth v Town of N. Hempstead*, 273 AD2d 215; *see also McCarthy v City of White Plains*, 54 AD3d 828, 829-830; *Akcelik v Town of Islip*, 38 AD3d 483, 484). Additionally, the evidence failed to show that the defendants created the alleged icy condition through an affirmative act of negligence, and that such act immediately resulted in the existence of that condition (*see Yarborough v City of New York*, 10 NY3d 726; *San Marco v Village/Town of Mt. Kisco*, 57 AD3d 874; *Jason v Town of N. Hempstead*, 61 AD3d 936; *Ravina v Incorporated Town of Greenburgh*, 6 AD3d 688, 689).

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them.

COVELLO, J.P., SANTUCCI, CHAMBERS and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court