

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

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_____AD3d_____

Argued - November 19, 2009

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2008-08476

DECISION & ORDER

Geraldine H. Warfield, et al., appellants, v Shan Associates of Syosset, LLC, et al., respondents, et al., defendant.

(Index No. 7640/06)

Peter D. DiBona, P.C., Brooklyn, N.Y., for appellants.

Tromello, McDonnell & Kehoe, Melville, N.Y. (A.G. Chancellor III of counsel), for respondents.

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, Nassau County (Davis, J.), entered July 30, 2008, as, upon reargument, adhered to so much of its original determination, in an order dated April 25, 2008, as granted that branch of the motion of the defendants Shan Associates of Syosset, LLC, and Rosemary Glover which was for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and upon reargument, so much of the order dated April 25, 2008, as granted that branch of the motion of the defendants Shan Associates of Syosset, LLC, and Rosemary Glover which was for summary judgment dismissing the complaint insofar as asserted against them is vacated, and that branch of the motion is denied.

Viewing the evidence in the light most favorable to the plaintiffs (*see Wilson v Rojas*, 63 AD3d 1048), the defendants Shan Associates of Syosset, LLC (hereinafter Shan), and Rosemary

January 12, 2010

Page 1.

WARFIELD v SHAN ASSOCIATES OF SYOSSET, LLC

Glover failed to demonstrate a prima facie entitlement to judgment as a matter of law on the issue of whether or not they had constructive or actual notice of the alleged slippery condition (*see Taylor v Rochdale Vil. Inc.*, 60 AD3d 930). Additionally, there are issues of fact as to whether the lighting in the parking lot where the accident occurred was inadequate and, if so, whether it was a proximate cause of the accident (*see Gestetner v Teitelbaum*, 52 AD3d 778). Thus, upon reargument, the motion for summary judgment dismissing the complaint insofar as asserted against Shan and Glover should have been denied by the Supreme Court.

PRUDENTI, P.J., ANGIOLILLO, LOTT and SGROI, 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