

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

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Argued - January 28, 2010

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2009-06526

DECISION & ORDER

Riva Teleschevsky, respondent, v Red Apple Fruit
and Grocery Corp., d/b/a Lerman's, et al., appellants.

(Index No. 28493/06)

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Anna A. Higgins and Paul A. Marchisotto of counsel), for appellants.

Alvin M. Bernstone, LLP, New York, N.Y. (Peter B. Croly of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Bunyan, J.), dated May 20, 2009, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff alleges that she tripped and fell over a wooden pallet which protruded several inches outward from beneath a display of watermelons in the defendants' fruit and vegetable store. After joinder of issue, the defendants moved for summary judgment dismissing the complaint. The defendants failed to establish their prima facie entitlement to judgment as a matter of law

March 2, 2010

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dismissing the complaint (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the Supreme Court properly denied the defendants' motion.

PRUDENTI, P.J., DILLON, ENG and ROMAN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court