

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

D27666  
O/mv

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Argued - May 13, 2010

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

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2009-06587

DECISION & ORDER

Margarita Cordova, appellant, v Union Turnpike  
Development Corp., et al., respondents, et al., defendants.

(Index No. 700029/06)

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Bader Yakaitis & Nonnenmacher, LLP, New York, N.Y. (Darlene S. Miloski of  
counsel), for appellant.

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Marcia  
K. Raicus of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Queens County (Agate, J.), dated May 8, 2009, which granted the  
motion of the defendants Union Turnpike Development Corp., Junction Blvd. Towers, Inc., and  
Boston Construction Corp. for summary judgment dismissing the complaint insofar as asserted  
against them.

ORDERED that the order is reversed, on the law, with costs, and the motion of the  
defendants Union Turnpike Development Corp., Junction Blvd. Towers, Inc., and Boston  
Construction Corp. for summary judgment dismissing the complaint insofar as asserted against them  
is denied.

The plaintiff allegedly sustained personal injuries when she tripped and fell due to a  
hole in a sidewalk. At the time of the accident, construction work was taking place near the subject  
sidewalk. The plaintiff alleged that heavy machines and trucks traversed the subject sidewalk to gain  
access to the construction site. The respondents moved for summary judgment, contending only that

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they did not create or have actual or constructive notice of the alleged defect. The Supreme Court granted the motion. We reverse.

The respondents failed to meet their initial burden of demonstrating the absence of any triable issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Contrary to the respondents' contention, triable issues of fact exist as to whether the respondents created or had actual or constructive notice of the defective sidewalk. In light of this determination, we need not examine the sufficiency of the plaintiff's opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851). Accordingly, the Supreme Court should have denied the respondents' motion for summary judgment.

FISHER, J.P., COVELLO, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court