

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

D30202  
C/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 31, 2011

JOSEPH COVELLO, J.P.  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2010-01328

DECISION & ORDER

Jasmin Pena, etc., et al., respondents, v City of  
Yonkers, appellant.

(Index No. 22918/08)

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Mark W. Blanchard, Corporation Counsel, Yonkers, N.Y. (Michael Levinson of  
counsel), for appellant.

Scott Baron & Associates, P.C., Howard Beach, N.Y. (W. Bradford Bernadt of  
counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from  
an order of the Supreme Court, Westchester County (Bellantoni, J.), entered January 12, 2010, which  
denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's  
motion for summary judgment dismissing the complaint is granted.

The infant plaintiff allegedly was injured when her right foot came into contact with  
a piece of metal protruding from the grassy area of a public sidewalk.

The defendant, City of Yonkers, established its prima facie entitlement to judgment  
as a matter of law by submitting evidence sufficient to demonstrate that it did not have prior written  
notice of the alleged defect (*see* Charter of the City of Yonkers § C24-11; *Lawler v City of Yonkers*,  
45 AD3d 813; *Rochford v City of Yonkers*, 12 AD3d 433). In opposition, the plaintiffs failed to raise  
a triable issue of fact because they offered only speculation that the defendant created the alleged

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defect (*see Patti v Town of N. Hempstead*, 23 AD3d 362; *Regan v City of New York*, 8 AD3d 462). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court