

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

D30436  
Y/prt

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

Argued - February 22, 2011

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
LEONARD B. AUSTIN  
SANDRA L. SGROI, JJ.

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2009-09638

DECISION & ORDER

Matthew Gelfand, et al., respondents, v Adjo Contracting Corp., et al., defendants, Town of Hempstead, appellant (and a third-party action).

(Index No. 13652/05)

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Rivkin Radler, LLP, Uniondale, N.Y. (Merril S. Biscone of counsel), for appellant.

Elovich & Adell, Long Beach, N.Y. (A. Trudy Adell, Mitchell Sommer, and Darryn Solotoff of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant Town of Hempstead appeals from a judgment of the Supreme Court, Nassau County (Adams, J.), entered October 5, 2009, which, upon two decisions of the same court entered January 23, 2009, and June 26, 2009, respectively, made after a bifurcated nonjury trial on the issues of liability and damages, is in favor of the plaintiffs and against it in the principal sum of \$625,000.

ORDERED that the judgment is affirmed, with costs.

In reviewing the Supreme Court's determination, made after a nonjury trial, our authority "is as broad as that of the trial court" and we "may render the judgment . . . warranted by the facts, taking into account in a close case the fact that the trial judge had the advantage of seeing the witnesses" (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [internal quotation marks omitted]). We discern no basis to disturb the Supreme Court's determination that the appellant was not entitled to prior written notice because the appellant created the dangerous condition that caused the injured plaintiff's accident through an affirmative act of

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negligence (*see Magidenko v Consolidated Edison*, 3 AD3d 553, 554; *Maggio v City of New York*, 305 AD2d 554, 555; *Akley v Clemons*, 237 AD2d 780, 781-782; *Parks v Hutchins*, 162 AD2d 666; *see also Tumminia v Cruz Constr. Corp.*, 41 AD3d 585; *Perrington v City of Mt. Vernon*, 37 AD3d 571, 572; *Padula v City of Long Beach*, 20 AD3d 555; *see generally Amabile v City of Buffalo*, 93 NY2d 471, 474; *Kiernan v Thompson*, 73 NY2d 840, 842).

The appellant's remaining contention is without merit.

SKELOS, J.P., BALKIN, AUSTIN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court