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Cited

As of: Jul 22, 2014

**Debrah Waller, Appellant, v Site Safety LLC et al., Respondents. (And Other Actions.)**

**8223 Index 103409/02**

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT**

**28 A.D.3d 236; 813 N.Y.S.2d 379; 2006 N.Y. App. Div. LEXIS 4135; 2006 NY Slip Op 2621**

**April 6, 2006, Decided**

**April 6, 2006, Entered**

**HEADNOTES**

[\*\*\*1] Negligence--Sidewalks.--Complaint alleging injury to plaintiff from trip and fall over wood protruding from barricade in temporary pedestrian walkway at construction site was dismissed; photographs taken shortly after plaintiff's fall did not show alleged hazard, and defendants established that they had neither actual nor constructive notice of any hazard--defendant's manager inspected walkway shortly before accident, and no evidence existed that such duties were negligently performed.

**COUNSEL:** Jaroslawicz & Jaros, New York (David Tolchin of counsel), for appellant.

Scott Stone, White Plains, for Site Safety LLC, respondent.

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP, Mineola (Thomas F. Maher of counsel), for BRF

Construction Corp., respondent.

Gartner, Bloom & Greiper, P.C., New York (Arthur P. Xanthos of counsel), for Mayrich Construction Corp., respondent.

Steven R. Sundheim & Associates, LLC, White Plains (Michael L. Marinelli of counsel), for Century-Maxim Construction Corp., respondent.

**JUDGES:** Concur--Tom, J.P., Andrias, Marlow, Williams and McGuire, JJ.

**OPINION**

[\*236] [\*\*380] Order, Supreme Court, New York County (Alice Schlesinger, J.), entered on or about November 10, 2004, which granted defendants' respective motions and cross motions for summary judgment dismissing the complaint, unanimously affirmed, without costs.

28 A.D.3d 236, \*236; 813 N.Y.S.2d 379, \*\*380;  
2006 N.Y. App. Div. LEXIS 4135, \*\*\*1; 2006 NY Slip Op 2621

Plaintiff allegedly sustained injury when she tripped and fell over a piece of wood protruding from a barricade used in the construction [\*\*\*2] of a temporary pedestrian walkway at a construction site. However, photographs of the accident location taken shortly after plaintiff's fall do not show the alleged hazard and, in any event, defendants established that they had neither actual nor constructive notice of any such hazard (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 492 NE2d 774, 501 NYS2d 646 [1986]). Defendant Site

Safety LLC's manager inspected the subject walkway shortly before the accident and found it safe, and there is no evidence that Site Safety negligently performed its duties (*see Doherty v City of New York*, 16 AD3d 124, 791 NYS2d 523 [2005] ).

We have considered plaintiff's remaining contentions and find them unavailing. Concur--Tom, J.P., Andrias, Marlow, Williams and McGuire, JJ.