

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Pitt-Burke, O'Neill Levy, Michael, Chan, JJ.

6006

NORINE MUELLER, et al.,
Plaintiffs- Appellants,

Index No. 153625/21
Case No. 2025-00698

-against-

2001 MARCUS AVENUE LLC, et al.,
Defendants- Respondents.

Burdo, Rubin & Sachs, Melville (Scott D. Rubin of counsel), for appellants.

Fabiani Cohen & Hall, LLP, New York (Nicholas Vervante of counsel), for respondents.

Order, Supreme Court, New York County (Schlomo S. Hagler, J.), entered January 17, 2025, which granted defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

In this personal injury action in which the injured plaintiff tripped and fell over a curb bordering a handicap access ramp, the court correctly granted defendants' motion for summary judgment dismissing the complaint. The curb at issue, which was painted a bright yellow to distinguish it from the adjacent grey concrete ramp and black parking lot blacktop, was open and obvious and not inherently dangerous (*see Philips v Paco Lafayette LLC*, 106 AD3d 631, 632 [1st Dept 2013]; *see also Kovel v Glenwood Mgt. Corp.*, 200 AD3d 460, 461 [1st Dept 2021], *lv denied* 38 NY3d 906 [2022]). The curb, which plaintiff chose to step onto rather than following the marked pedestrian walkway, was raised to prevent wheelchair patrons from accidentally rolling into the parking lot. It was approved by the town, complied with all relevant codes, and had been in place for

approximately 10 years without incident (*compare Bossert v New York Univ. Langone Med. Ctr.—Tisch Hosp.*, 213 AD3d 547, 548 [1st Dept 2023]).

We have considered plaintiffs' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 5, 2026

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court