

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

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_____AD3d_____

Submitted - December 12, 2006

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
DANIEL D. ANGIOLILLO, JJ.

2005-11194

DECISION & ORDER

Adrienne Brown, respondent, v Linden
Plaza Housing Co., Inc., et al., appellants.

(Index No. 9387/04)

Mulholland, Minion & Roe, Williston Park, N.Y. (Taryn M. Fitzgerald of counsel),
for appellants.

Proner & Proner, P.C., New York, N.Y. (Tobi R. Salottolo of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Kings County (Douglass, J.), dated October 19, 2005, which denied
their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A defendant who has actual knowledge of an ongoing and recurring dangerous
condition can be charged with constructive notice of each specific reoccurrence of the condition (*see*
Osorio v Wendell Terrace Owners Corp., 276 AD2d 540). Here, the defendants failed to meet their
burden of establishing that the condition of garbage and debris on the interior stairway of the premises
was not frequent, ongoing, and customary, and that they did not have actual notice of this allegedly
recurring condition.

Moreover, while the defendants contend that the plaintiff's inability to identify the
defect that caused her to fall warranted dismissal of the complaint, it could be logically inferred from

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this record that the cause of the plaintiff's slip-and-fall accident was the presence of trash on the stairway (*see Mitchell v Mongoose, Inc.* 19 AD3d 380).

Accordingly, the defendants' motion for summary judgment dismissing the complaint was properly denied.

RIVERA, J.P., SPOLZINO, RITTER and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court