

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

D14198  
W/cb

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

Argued - January 25, 2007

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY, JJ.

---

2005-11262

DECISION & ORDER

John Tutunjian, appellant, v Cove Landing on the  
Sound Homeowners Association, Inc., respondent.

(Index No. 5932/04)

---

Ginsburg & Misk, Queens Village, N.Y. (Gerard N. Misk of counsel), for appellant.

Callan, Koster, Brady & Brennan, LLP, Uniondale, N.Y. (Vincent D. Finnegan of  
counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Nassau County (O'Connell, J.), entered October 5, 2005, which granted  
the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly slipped and fell on wet moss on an exterior staircase of the  
defendant's premises during a light rain. The staircase was made out of wooden railroad ties.  
Contrary to the plaintiff's contention, he failed to submit evidence sufficient to raise a triable issue  
of fact in opposition to the defendant's demonstration of its entitlement to judgment as a matter of  
law (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). The plaintiff never alleged that the  
staircase itself was inherently slippery or that the slippery nature of the staircase caused him to fall.  
Hence, the statement of the plaintiff's expert that the accident was proximately caused by the  
defendant's failure to apply non-slip material on the surface of the staircase was speculative and  
insufficient to raise a triable issue of fact (*see Cappolla v City of New York*, 302 AD2d 547, 550).

March 6, 2007

Page 1.

TUTUNJIAN v COVE LANDING ON THE  
SOUND HOMEOWNERS ASSOCIATION, INC.

Moreover, the plaintiff failed to raise a triable issue of fact as to whether the absence of a second handrail was a proximate cause of the accident (*see Pancella v County of Suffolk*, 16 AD3d 566; *Piatek v New York City Tr. Auth.*, 14 AD3d 685; *Hyman v Queens County Bancorp.*, 307 AD2d 984, *affd* 3 NY3d 743).

MASTRO, J.P., FISHER, ANGIOLILLO and McCARTHY, 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