

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

D16037
W/gts

_____AD3d_____

Argued - June 22, 2007

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2007-01149

DECISION & ORDER

Deborah Baxter, respondent, v Jackson
Terrace Associates, LLC, appellant.

(Index No. 824/04)

White, Quinlan & Staley, LLP, Garden City, N.Y. (Arthur T. McQuillan of counsel),
for appellant.

Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola, N.Y. (Barbara
E. Manes and Melissa C. Ingrassia of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an
order of the Supreme Court, Nassau County (Brandveen, J.), entered January 8, 2007, which denied
its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's
motion for summary judgment dismissing the complaint is granted.

The plaintiff fell down the stairs in her apartment building, which was owned by the
defendant, when her right foot allegedly became stuck in a sticky and gooey substance, causing her
to fall forward. The defendant established its prima facie entitlement to summary judgment dismissing
the complaint by showing, as a matter of law, that it did not create or have actual or constructive
notice of the allegedly dangerous condition that caused the accident (*see Gordon v American
Museum of Natural History*, 67 NY2d 836, 837; *Marinelli v Regal Cinemas*, 40 AD3d 1052;
Chemont v Pathmark Supermarkets, 279 AD2d 545). In opposition, the plaintiff failed to raise a
triable issue of fact. She offered no evidence concerning how long the alleged hazard existed prior

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to the accident. Her new allegation, offered for the first time in opposition to the defendant's motion, that she fell because of garbage on the steps, was insufficient to raise a triable issue of fact because it was clearly an attempt to avoid the consequences of her deposition testimony by raising a feigned factual issue (*see Capraro v Staten Is. Univ. Hosp.*, 245 AD2d 256). Therefore, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

MASTRO, J.P., COVELLO, McCARTHY and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court